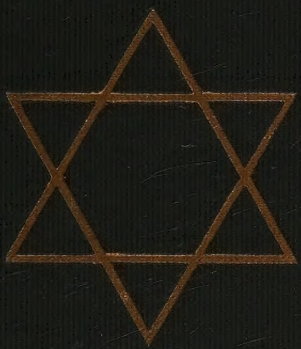

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA METZIA
(MIDDLE GATE, PART I.)

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EXPLANATORY REMARKS

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

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* Continuation of previous volume.

the flax became dearer and the seller sold it (for Kahana's benefit). One who has stolen the value of a coin swears falsely and afterwards confesses. The same is the case in a deposit. If one has robbed one of five persons, and he does not know which of them. It happened with one pious man who bought of one of two persons, and he did not know from which of them. A messenger must not be made in his absence. It happened with R. Abba, who was the creditor of R. Joseph bar Hama, and the former asked R. Safra to bring, etc. "My master, do you mean to deduce from this Scripture that it must be paid, or you say is it common?" If one has robbed two bunches of the value of a parutha and had returned one of them, how is the law? He who denies a deposit is considered as a robber. As soon as the owner has taken an oath, he has not to pay. One who claims "stolen" on a deposit, or of a lost article he has found, must pay double, etc. The three oaths—first, that I have done all my duty in taking care of it; second, that I did not make use of it; and third, that it is not under my control. If a gratuitous bailee swore it was stolen, and, nevertheless, he paid: and then the thief was found. Where is my bailment? Lost! Do you swear by God? Amen. Witnesses testified that he himself had stolen it. If one robbed his father and swore falsely, and after his death he confessed. "I swear you shall have not any benefit from my estate." If one robbed a proselyte and swore, and afterwards the proselyte died. The priests who receive the robbery of the proselyte, are they considered heirs, or only receivers of a donation? 228–250

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MISHNA *I.*: If one has stolen wood and made utensils of it, or wool and made garments of it, he must pay only for the cost of the material at the time it was stolen. If one stole a gravid cow and it brought forth young, or a sheep with its wool and he sheared it, he must pay the value of a gravid cow in its last month, or the value of a sheep ready to be sheared; if, however, the cow became gravid or the sheep grew its wool after the robbery, their value at the time they were stolen is to be paid. This is the rule: All robbers must repay the value of the article as it was at the time of the robbery.

GEMARA: The Mishna states: *Utensils* of wood or garments of wool, from which it is to be inferred that when the utensils were not as yet made, but only planned, or the garments not yet bleached, the law is otherwise. Then there is a contradiction in the following Boraitha: "If one has stolen wood and planed it, stones and cut them, wool and bleached it, flax and cleansed it, the payment for it is to be taxed as when stolen"? Said Abayi: "The Tana of our Mishna states that not only an irremediable change makes the robber the owner of it so that he must not return the same, but the value of the material when it was stolen, which is biblical; but even a removable change, *e.g.*, planed wood of which he made utensils that can be taken apart in such a way that the wood may remain in the same condition as when stolen, or spun wool, which can also be taken apart, etc., which change is only rabbinical. The Mishna comes to teach us, that even in such a case the robber acquires title by the change and must pay only the value of the material." R. Ashi, however, said: "The Tana of our Mishna speaks also of a change that is biblical. For instance, by uten-

sils is meant even a planer with which he has only planed the wood, and by garments is meant unbleached felt-spreadings (which he has only bleached) which change is irremediable." If bleaching is considered an irremediable change, it would be contradictory of the following Mishna, which states: "If one had no time to give it to the priest until it was dyed, then he is free; but when it was only bleached, he must give it to the priest"? Said Abayi: "This presents no difficulty, as our Mishna is in accord with R. Simeon, and the other with the rabbis of the following Boraitha: If he has the wool from five sheep, a quantity of about a pound and a half, a part of it would go to the priests. If some of this quantity was already woven, it does not count. If, however, some of it was only bleached, according to the sages it counts, and according to R. Simeon it does not." Rabha said: "Both statements may be explained in accordance with R. Simeon, and there is no difficulty, as one of them speaks of it when it was only scattered, and the other one speaks of it when it was combed before bleaching." R. Hyya bar Abin said: "The one speaks when it was only bleached and the other when it was sulphurated." Now, then, how can bleaching be considered a biblical change, when even dyeing is not considered a change, according to R. Simeon; as is stated in the Boraitha concerning the gift of the first shearing to the priest, in the case mentioned above: "Do not exclude from the quantity even wool that was already dyed"? Said Abayi: "This presents no difficulty. The statement of R. Simeon, given by R. Simeon ben Jehudah in his name, that dyeing wool counts, is opposed to the rabbis, who declare that R. Simeon said it does not count (consequently, one Boraitha is in accord with R. Simeon ben Jehudah's statement and the other is in accord with the declaration of the rabbis)." Rabha, however, said: "It is not necessary to say that the rabbis oppose R. Simeon ben Jehudah, for dyeing is different, because it can be removed by *οαπων*, and the above statement, that when it was dyed he is free, speaks when it was dyed by *σαπωγ*, which is not irremediable."

Said Abayi: All the following Tanaim agree with R. Simeon's statement explained above, that a change does not give title: Namely, Beth Shammai, as stated above (Ch. VII. p. 150). R. Eliezer ben Jacob of the following Boraitha: R. Eliezer ben Jacob said: If one had stolen a saah of wheat and had ground, kneaded, and baked it, and separated the heave of it, how can

he make a benediction; it would be not a benediction but a blasphemy, as it is written [Psalm, x. 3]: "The robber blesses . . . despises the Lord." Simeon b. Eliezer, of the following Boraitha, declares the following rule: Every increase that was made by the robber is subject to his disposal: He may keep it for himself, or return it to its owner, saying: Here is your property. How is this to be understood? (If he may say to the one robbed, "Here is yours," then it belongs to the owner—how, then, is it at the robber's disposal?) Said R. Shesheth: He means to say, if there is an increase the robber may retain it; but if there is a decrease, he can say to the one robbed, "It is yours," because a change in the property does not give title. If so, why not the same when there is an increase? This is only an enactment of the sages for the benefit of those who repent. R. Ishmael, of the following Boraitha: The positive commandment to separate the corner tithe is to be performed by putting aside from the standing corn; if that has not been done, he may put aside from the sheaves; if he had neglected also from this, he may do it in the granary before the corn was threshed; but afterwards he separates first the Levitical tithe and then the corner tithe. In the name of R. Ishmael, however, it was said: "He may separate the corner tithe and give it to the poor even from the dough."

Said R. Papa to Abayi: "Would all the above-mentioned Tanaim trouble themselves to teach us a Halakha of the Beth Shammai (which does not prevail?)," and he answered: "All they mean to say, is that Beth Shammai and Beth Hillel do not differ in this regard." Said Rabha: Why, then, (what compels you to teach that all the Tanaim hold that a change is of no avail)? Perhaps R. Simeon ben Jehudah's statement has reference only to a case of dyeing, as the color can be removed as stated above; and the Beth Shammai, because it is not clean enough for the altar, and R. Eliezer ben Jacob could not accept it to pronounce a benediction upon it, as such a meritorious act should not be caused by a transgression; and R. Simeon ben Elazar also, because it can again become fat; and, finally, R. Ishmael's statement was made only on the corner tithe as there is a superfluous word in the expression "Thou shalt leave it" (but in any other case they all may agree that a change is of value). And lest one say, that it can be inferred from this for all the other cases, it would not be correct, because charity affairs are different, as R. Jonathan questioned: "What is the

reason of it?" Shall we assume that R. Ishmael's theory is correct, because he holds that a change does not give title, or perhaps he holds it here only to be in accord with the superfluous word stated above, which must be only for the purpose that this rule applies only here as there is not known any other purpose for it? And he questioned also, What will the rabbis who opposed R. Ishmael say in regard to the superfluous expression in question? It can be said, It is needed; for we have learned in the following Boraitha: If one has renounced his ownership of a vineyard, and then in the morning he plucked the grapes, he is exempt from cleaning the vineyard and gathering every grape, forgotten sheaf, and corner tithe (because of the above-mentioned expression or something similar to it being applicable to all these gifts). It is, however, exempt from tithe. Said R. Jehudah in the name of Samuel: "The Halakha prevails in accord with R. Simeon ben Elazar." Abayi taught the same as follows: R. Jehudah said in the name of Samuel: It was said that the Halakha prevails according to R. Simeon b. Elazar, but he did not accept it.

R. Hyya bar Abba said in the name of R. Johanan: According to the Scripture a stolen thing is to be returned whatever its condition (although it is changed), as it is written [Lev. v. 23]: "He shall restore what he has taken away violently," no matter how it is now; and there is no wonder at the statement of our Mishna, for it is only for the benefit of those who repent. The rabbis taught: Robbers and usurers, if they make restitution of their own accord, it should not be accepted; and he who does accept it, acts contrary to the sages. Said R. Johanan: This Mishna was taught in the time of Rabbi, as we have learned in the following Boraitha: It happened that one intended to repent, but his wife told him, "If thou wilt do so, then even thy girdle will not belong to thee," and so he was kept back from repenting. At this time the statement of the above Mishna was made. Come and hear: "The repentance of shepherds, commissioners, and the contractors of duties is hard (because they do not know to whom to return the stolen goods); and when they nevertheless do repent, they have to return to those whom they know. (Hence we see that they must return?) We can say: Yea, they must return, but it should not be accepted. Then what is the use of their returning? To satisfy the Heavenly Will. If so, in what point is the difficulty of their repentance? And also, how would the last part of this

Boraitha be understood: "And the remainder, which they do not know to whom to return, shall be used by them in providing for the needs of the community"? And R. Hisda explained it that it means, *e.g.*, wells, excavations, etc. Hence we see that it should be accepted? Therefore we must say: The above Boraitha was taught before the above-mentioned enactment of the sages was made. According to R. Na'hman, however, who said that this enactment was made in reference to stolen articles which no longer exist, it may be explained that both Boraithas were taught after the enactment, and there is no contradiction, as one speaks of stolen articles that exist, and the other of such stolen articles as no longer exist. But was, then, not the above-mentioned enactment made in reference to the statement about the girdle, although it was in existence? Nay, it must not be taken literally. It means the value of the girdle. But was not the enactment made even in reference to an article that exists; for there is a Mishna that when a stolen beam was used for the building of a house, the one robbed could collect its value only, for the benefit of him who repented, although the beam still exists? This case is different, as the robber would suffer great damage by taking it out, and therefore the rabbis consider it as if it did not exist at all.

"*If one has stolen a gravid cow*," etc. The rabbis taught: If one had stolen a sheep and he had shorn it, or a cow and she brought forth, he must pay for the animal itself, and also for the wool or the young. This is the decree of R. Meir. R. Jehudah said: "A stolen thing must be returned as it is" (and the value of the wool or the young as they were, at the time of the robbery, but not the increase during the time they were under his control). R. Simeon, however, said: The value of the stolen article in money when it was robbed must always be considered. The schoolmen propounded a question: What is R. Meir's reason? Does he hold that a change is never of any avail, or, in other cases, agree that a change gives title, but here it is only a fine which should be inflicted on the robber, and the difference (between the two suppositions would be) when the cow becomes thin (in the house of the robber)? Come and hear: If one has given wool to dye it red, and it was dyed black, or *vice versa*, said R. Meir: He must pay him the value of the wool. Hence only the "value of the wool," but not for the increase? Now, if R. Meir is of the opinion that a change does not give title, the value of the wool and the increase

should be paid? Hence it is to be inferred that he holds that everywhere a change acquires title, and here is only a fine for the robber. According to others, the schoolmen did not propound the above question, because Rabh has changed the names in the following Mishna. If one has stolen a cow or slaves, and they become old while under his control, he must pay according to their value when they were stolen. This is the decree of R. Meir. The sages, however, say as to slaves, he may say: "Yours is before you." Hence we see that, according to R. Meir, a change gives title, and here is only a fine, and if there was any question by the schoolmen it was this: Is the fine only for an intentional act or only for an unintentional? Come and hear the Mishna mentioned above concerning the dyeing of wool, that he must pay only for the wool and not for the increase, because there was no intention, from which it is to be inferred that without intention there is no fine. "R. Jehudah said the stolen property," etc. What is the difference between R. Jehudah's and R. Simeon's statement? Said R. Zbid: They differ when the increase is still in the stolen thing. According to R. Jehudah, it belongs to the one robbed, and according to R. Simeon to the robber. R. Papa said: Both agree that such an increase belongs to the robber (as even R. Jehudah meant only it should be returned as it was at the time it was stolen), and the case here held when it was customary in the country to take cattle for improvement for the reward of half, third, or a quarter. According to R. Simeon, the robber gets only the customary reward, but acording to R. Jehudah the whole improvement belongs to him. There is a Boraitha which states plainly as R. Papa explained. Said R. Ashi: When we were in the college of R. Kahana, we were in doubt regarding R. Simeon's theory as to the payment of half, etc., for improvement, whether he shall be paid in money or with its meat? Afterwards we concluded from R. Na'hman's statement in the name of Samuel that it means in money: There are three cases in which the increase is appraised and the payment is with money, and they are: A first-born pays the increase after the death of his father to the other brothers; the same the creditor to the buyer, or to the heirs (for the increase after the time the estates were bought or after the death of the lender). Said Rabbina to R. Ashi: How could Samuel here state that the creditor must pay to the buyer for the increase? Did he not say that the creditor collects even the increase? And he an-

swered: This presents no difficulty, when we take into consideration that there is a difference between an increase which is not yet ripe (that in such a case a creditor collects it) and an increase which is already ripe for harvest (which a creditor cannot collect). He objected: But was it not a fact that Samuel's court collected every day even from crops that were ripe for harvest? He answered: This also presents no difficulty when the claim is equal to the amount of the field together with the increase (then the creditor collects the increase also). When the claim is, however, only for the value of the estate (then the creditor must pay for the increase). Rejoined the former: This is right according to him who holds that even when the buyer has money he cannot pay the creditor with money; but according to him who holds that when the buyer has money, he can pay the creditor with money (why is it stated that the creditor pays with money for the increase?) why should not the buyer (have the right to) say: If I had money, I would make you leave the estate entirely. Now, when you take it for your debt, you have the right to take it for your debt only; but as for the increase, would it not be right to leave for me a part of the estate? And he answered: The case was when the field was hypothecated to the creditor, *i.e.*, when the loan was issued, he told him: You have to collect your debt from this estate only.

Rabha said: If one has stolen an article, and after improving it sells or bequeaths it, the sale or the bequest is valid for the improvement. He questioned, however, in case it was improved by the buyer, How is the law? After he questioned it, he decided: What else, then, had the first sold to the other, if not every right that he might have in this estate (so that the buyer has the same share of the improvement as the seller himself).

R. Papa said: He who stole a date tree and cut it down, did not acquire title, although he removed it to his own field. Why so? Because it has even then the same name as before—date tree. It is the same if he cut it in pieces, for they are still called pieces of a date tree. If, however, he has stolen pieces and made beams of them, title is acquired; if he has stolen beams and made short ones of them, title is not acquired; but if he has made boards of them, title is acquired.

Rabha said: If one stole a palm branch and has torn it in single leaves, title is acquired, because it is no more called palm,

but leaves; for the same reason, title is acquired when he has stolen leaves and made a broom of them. If, however, he has stolen a broom and made a rope, title is not acquired, because it can be taken apart and a broom again made of it. R. Papa questioned: If the double leaf of the same was divided (so that it cannot be restored), how is the law? Come and hear: R. Mathun said in the name of R. Jehoshua ben Levi: If the double leaf is divided, it is considered as if taken away, and it is invalid (for use of that day). Infer from this that such a change gives title.

R. Papa said: "If one has stolen clay and made bricks of it, title is not acquired, because it can be reduced again to clay; conversely, however, title is acquired, because, even if he will again convert it into bricks, it will have another appearance and will be no more the same as it was before. The same is the case if he has robbed bullion and coined it into money. If, however, he stole old coins and had cleaned them that they look like new ones, title is not acquired; but conversely it is, because, even should he clean them again, they will still be recognized as the old ones.

"*This is the rule,*" etc. What does it mean to add? Such a case as that of which R. Ilai said: "When one has stolen a sheep and it becomes a ram, or a calf and it becomes an ox, the change is considered as being made while in the possession of the thief, and title is acquired so that, if he has slaughtered or sold it, it is considered he has done it with his own. It happened that one had stolen a pair of oxen, and he ploughed and sowed his field with them. Finally, he returned them. When the case came before R. Na'hman, he said: Go and appraise the increase he has made with them. Said Rabha to him: Is the increase of the field caused only by the oxen, and not by the field also? And he answered: Did I say the whole increase shall be collected? I mean half of it only. And he rejoined: After all, it is no more than a robbery of which the rule is, "It shall be returned as it is." He answered again: Did I not tell you that when I am sitting in the court you shall say nothing to me; for Huna, my colleague, has said that I and the King Sabura are brothers in regard to court cases.* This man is known as an old robber and I want to fine him.

* Rashi says: "It means Samuel, who was the greatest authority in court cases." Abraham Krochmal, however, maintains that R. Na'hman meant to say that Huna the Exilarch had granted him the power to impose fines as he thought necessary,

MISHNA *II.*: If one has stolen cattle or slaves, and they become old, he must pay their value at the time stolen. R. Meir, however, says: "Yours are before you." If he has stolen a coin and it broke, fruits and they became rotten, wine and it became sour, it is to be paid as at the time robbed; a coin which afterward became invalid, heave-offering and it became unclean,* or leaven which was in the hand of the one robbed during Passover, a cow and it was used for sodomy, or it became invalid for the altar or it was condemned to be stoned, he may say: "Yours is before you."

GEMARA: Said R. Papa: It means not only when it became old, but even when it becomes thin. But is it not stated plainly old? This expression is used to teach that only when it is incurable, as in the weakness of old age. Said Mar, the older son of R. Hisda, to R. Ashi: It was said in the name of R. Johanan that when one steals a sheep and it becomes a ram, or a calf and it becomes an ox, such a change gives title; and if he slaughters or sells it, it is considered as his own. And he answered: Did not I tell you, you shall not change names? This was said not in the name of R. Johanan, but of R. Ilai. "*R. Meir said,*" etc. R. Hanina bar Abdimi said in the name of Rabh: The Halakha prevails according to R. Meir. But why did Rabh desert the majority in this decision? The reason is because in the Boraitha the names are changed. Why, then, has Rabh given preference to the Boraitha, and not to the Mishna, which ought to be better authority? Yea, when there is one Mishna against one Boraitha; but there are two Boraithas against one Mishna (and therefore he prefers to change the names in our Mishna, that it shall correspond with them). The other Boraitha is as follows: If one has exchanged a cow for an ass, and the cow has brought forth young; or if one has sold a female slave and she has given birth (to a child), and one of the parties said it was born when it was in his control, and the other keeps silent, the first acquired title to it; when each of them says he does not know, then the value is to be divided.

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just as could be done by the king; and it seems to be so, because R. Na'hman did not claim that he had done it according to the law, but only as a fine; and if this Seburmalka meant Samuel, then it shows nothing. See Krochmal's remarks on the Talmud (p. 263).

* Which, according to the law, has no more any value. See Appendix to Tract Sabbath.

But if each of them claims that it occurred when it was under his control, then the seller has to take an oath that it was born while under his control (and not the buyer, as there is a rule that all those to whom a biblical oath is applied, they swear and do not pay). So is the decree of R. Meir. The sages, however, say: There is no oath, as an oath is not to be ordered in cases of slaves or real estate. Hence, here also, is the opinion of R. Meir that slaves are not considered real estate. But if he changes the names in the Mishna, his statement ought to be that the Halakha prevails according to the rabbis? He meant to say so: According to you who have changed the names, the Halakha prevails as R. Meir. But how could Rabh state that a slave is considered real estate? Did not R. Daniel bar R. Ktina say in his name: If one has compelled a slave of his neighbor to do labor for him, he is free from charges? Now, if you bear in mind that a slave is considered real estate, why shall he not be charged? Is not the slave yet under the control of his owner? The case was when not in time of labor (that one has the benefit when the other loses nothing, and there is a decision above that in such a case he is free from charges). But would the owner of the slave be satisfied that his slave should become tired, so that it would do harm to his usual work? It can be explained (that his owner has no work for his slave), and so it is agreeable for him that his slave shall not become used to idleness. R. Joseph bar Hama used to compel slaves of his debtors to labor for him. Said Rabha, his son, to him: Why does the Master so? And he answered him: Because R. Na'hman said that the labor of a slave is not worth even the food he consumes. Said Rabha: R. Na'hman said so because of his slave Daru, who was dallying about the shops and doing nothing, but not of slaves who are working. And he answered: I hold with the statement made by R. Daniel, who in the name of Rabh stated above. And his son said again: This is said in case the compeller has not any claims against the owners of the slaves; but you, Master, who claim money from their owners, it looks like usury, as R. Joseph bar Miniumi said in the name of R. Na'hman: Although it is said of one who lives on the property of another without his knowledge is not obliged to pay rent therefor, but when he has lent money to the owner of the property he must pay him rent (that it shall not be considered as usury). Rejoined his father: (You are right.) I will not do it again.

It was taught: If one takes possession of another's ship and makes use of it. Said Rabh: The owner may collect either the usual price of loaning it, or, if it was damaged and the amount of repairing surpasses the amount of hiring, he may collect even this. Samuel, however, said: If the amount of the hiring surpasses the amount of the repairing, he takes only the latter. Said R. Papa: They do not differ. Rabh speaks of a case where the intention of the sailor was to pay the value of the ship, and Samuel speaks of a case where the intention was to steal (and a stolen article is to be returned as it was when stolen, without any increase, for the benefit of those who repent). "If one has stolen a coin," etc. Said R. Huna: The expression "broke" is to be taken literally; the expression "it became invalid" means that the government abolished it. R. Jehudah, however, said: It would be the same as if broken, but the expression "invalid" means that it became invalid in *this country*, but has still a value in another one. Said R. Hisda to R. Huna: According to your theory, it was abolished by the government. Is that not equivalent to those who stole fruits which became rotten or wine which became sour, for which the value at the time it was stolen is to be paid? And he answered: There is a change in taste and smell, which is not the case here. Said Rabba to R. Jehudah: According to your theory abolished by the government is the same as broken. Is that not equivalent to the case of heave-offering, of which it is stated that he may say: "Yours is before you"? And he answered: Nay, it cannot be equivalent; for in the case of the heave-offering, it remains the same as it was before, and no one can recognize any change in it; but here every one can recognize that the coin is of no value. It was taught: If one has given credit, to be repaid with coin which had the full value at that time, and afterwards this coin was abolished? Rabh said: He must pay him with coin of the time of payment. Samuel, however, said: The debtor can say, "I give you the coin according to our agreement, and you must take the trouble to use it in the city of Mishon, where it has a value. Said R. Na'hman: It seems that Samuel's theory can be applied in the case of a creditor, who intends to go to that place, but not otherwise. Rabha objected to R. Na'hman, from the following Boraitha: The second tithe cannot be changed with coins which are not circulating in the market, as the coins of Cachba, or of the government of Jerusalem, or of the kings of the ancient times. As

the expression, "kings of the ancient times," does not imply the coins of the later kings, which have not any value here, but still have a value in other countries, they may be changed (although the changer has not any intention to go there, as he has to take this money for use in Jerusalem)? And he rejoined: The case was when the governments were not particular when foreign coins were used. According to you (said Rabha again), Samuel means to say that even when the governments are particular; but if they are, how can he bring the coins there? It can be explained that they can be smuggled in, as the government does not search for them, but if found they confiscate them.

The rabbis taught: What were the coins of Jerusalem? David and Solomon were engraved on one side, and Jerusalem the holy city on the other side; and what were the coins of Abraham the patriarch? An old man and woman on one side and a young man and woman on the other side. Rabha questioned R. Hisda: If one has given credit, to be paid with a certain coin, and in the mean time the coins increased in weight, what is the law? And he answered: He must give him coins which are used at the time of payment. And he questioned again: Even if there is a large increase in size and weight?* And he said: Yea. But on account of the larger coins, the fruits become cheaper (as we get more produce for a larger coin than a smaller one, and so it would look like usury). Said R. Ashi: It must be discovered whether the fruits become cheaper on account of increase of the coins in question, then the payment is to be reduced accordingly. But if the fruits become cheap on account of great production, then no reduction is to be made. But (even in the latter case), at any rate, is there not then an increase in the metal of the coin which looks like usury? Therefore the question must be decided in accordance with the following act of Papa and R. Huna the son of R. Joshua, who have in such a case examined the different coins of the merchant Argdimus, and have found that eight of the new

* The text reads "Khi Naphia" and "Khi Tratia." The dictionaries translate the former expression as "a sieve" and the second as "a third of the weight or size." It seems to us, however, that the translation of the former is not correct, as the spelling of Nopha (a sieve) is always with an *h* and not with an *i*; and aside from this, the text shows that "tratia" was still larger than Naphia, and according to the dictionaries the first would be larger than the second. We have therefore given the real meaning, omitting the Chaldean expressions, which are not known to us.

ones are equal to ten of the old ones (and then they decided that the borrower must pay accordingly). Rabha said: If it happened that one had pushed another's hand, and a coin fell down from his hand into the sea, he is free, as he may say: I did it unintentionally, and the coin is before you; you may take it. This is the case only when the water is so clear that the coin is to be seen, but not otherwise.* Rabha objected from the following Mishna: The second tithe cannot be charged upon money which is not under one's control at the time, *e.g.*, when he placed his money in custody or in the king's treasury (which he cannot reach without great difficulty), or when the purse with money fell into the sea, so that the tithe cannot be charged on such money. (Hence we see that such money is not considered under his control.) And Rabha answered: This case is different, as the verse plainly states "and bind up the money in thy hand." And Rabha said again: If one has defaced coins belonging to others, he is free, because he did not take away anything, and it is considered as if he had done nothing. This is only by striking with a mortar upon the effigy (so that it disappears), but not when he has filed it, as then the weight of it is lessened. And Rabha said again: If one cuts off the ear of his neighbor's cow, which by such an act becomes unfit for the altar, he is free, because the cow is afterwards as good as before and he has done nothing, as not all cattle are prepared for the altar. Rabha objected from the following Boraitha: "If one has labored with the red cow or with its ashes, he is free from the lower court, but he is nevertheless responsible in the divine court." We see then that labor which cannot be recognized on the body of the animal as damaging, the civil court cannot make him liable for; but by taking off the ear, which is recognized on the body, he should be responsible even before the civil court? Nay, the case is the same, and the above Boraitha comes to teach us that even in a case where the change is not to be recognized on the body, he is nevertheless responsible before the divine court. The same said again: If one has burnt a note of his neighbor, he is free, because he can say, "I have only burned a piece of paper." Rami bar Hama opposed: Let us see. If there are witnesses who know what

* All this applies when the coin was dropped from the owner's hand by one unintentionally pushing the same; but if he took it out of his own hand and dropped it, it is a robbery, and must be returned.

was written in the note, let them draw another good note for him (and there would be no damage at all); and if there are no witnesses, how can we know the amount of the note? Said Rabha: The rabbis' decision may hold even when the burner trusts the owner of the note as to its amount. R. Dimi bar Hanina said: The above statement of Rabha is discussed by R. Simeon and the rabbis, namely: According to R. Simeon, who holds that a germon is considered a direct pecuniary loss, then in the case of Rabha there is a liability; but to the rabbis, who hold that a germon is not considered such, then in the case of Rabha there is no liability. R. Huna, the son of R. Joshua, however, opposed: You have heard R. Simeon so declaring only in a case where the origin was money, *e.g.*, in the following case stated by Rabha: If one has stolen leavened bread before passover, and another has burned it in the middle days of the feast, he is free, because there is an obligation on every Israelite to destroy it. If the case occurs after passover, there is a difference of opinion; according to R. Simeon, by whom it is held a germon for a direct pecuniary damage, there is liability, and according to his opponents there is not; but in a case where the origin is not money, did you hear them differ? Said Amemar: In the courts where they summon for causing damage by germon, the full value of the note is to be collected from the destroyer. In the courts, however, where they do not, in such cases there is to be collected only the value of the piece of paper. Such a case happened, and Raphram compelled R. Ashi to pay from his best estates.

"*Leavened bread,*" etc., "*he can say, 'Yours is before you.'*" Who is the Tana who holds that in prohibited things, from which no benefit is to be derived, one may nevertheless say: "Yours is before you." Said R. Hisda: It is R. Jacob of the Boraitha stated above (p. 103). R. Jacob said: Even when it is already decided that the ox shall be killed, and the bailee has returned it to its owner, the act is valid, and we must assume the point of their difference is this: R. Jacob holds that of things from which no benefit is to be derived he may nevertheless say: "Yours is before you," and the rabbis hold that such is not the case? Said Rabha to him: Nay, all agree, in the case stated above, that one may say, "Yours is before you." For if such is not the case, let them differ also in case of leaven on passover (stated above). The point of their difference here, however, is this: Whether the court may decide the

case of the goring ox in its absence. The rabbis hold that the decision must be in the presence of the ox, and therefore the owner can claim that if it should be returned to him before the decision of the court, he could drive it away to a meadow, but after the decision he could do nothing; so that no decision could be rendered; and R. Jacob holds that the presence of the ox is not necessary, and the bailee can say to the owner: "What is the difference, when the ox would be returned to you; the court would decide the case in any event, and as the ox is yours, I have nothing to do with it."

"*Fruits, and they became rotten,*" etc. But we have learned in a Mishna that in such a case one must pay their value at the time they were stolen? Said R. Papa: The Mishna just quoted speaks of a case when all the fruit had become rotten, and our Mishna speaks when only a part of them had become so.

MISHNA *III.*: If a specialist took a thing to repair it and he spoiled it, he must pay. The same is the case if a carpenter took a box, a trunk, or a cage to repair and he has spoiled it—he must pay. A builder who undertook to take apart a wall, and he broke the stones or bricks, or spoiled them, he must pay. If, however, by taking it apart from one side, it fell down from another side, he is free; provided, however, it did not fall down by reason of the stroke.

GEMARA: Said R. Asi: The Mishna speaks only when the things were given solely for repairing, *e.g.*, to put nails on it; but if wood were given to one to make the above articles new ones and he broke them, he has to pay only for the wood, and not for the vessels, because the carpenter acquires title in the increase of the wood by having made a vessel of it. There is an objection from our Mishna: If a specialist took something to repair it, he is liable. Shall we not assume that he took wood? Nay, it means when he took vessels. But does not the second part speak of vessels, of which it is to be inferred that the first part speaks of wood? Nay, the Mishna itself explains in the latter part the meaning of the first part, and it is to be read thus: If he has spoiled. How so? If he has given it to specialists for repairing, and they have spoiled it, they are responsible; *e.g.*, if he gives to a carpenter a trunk, etc. And it seems also that the latter part is only an explanation. Then (if such is not the case) the latter case would be entirely superfluous, as it is stated already in the first part that, even if he took wood he must pay; it is self-evident, when he took ves-

sels and spoiled them? (Says the Gemara:) This conclusion is not strong enough, as it can be said that the statement of the second part was necessary to declare the meaning of the first part, lest one say that the first part treats of vessels, but with wood the case would be different, it expresses in the second part the different vessels, to infer from it that the first part treats of wood, and, nevertheless, he is responsible. There is another objection from the following Mishna: Come and hear: If a specialist took a garment and made it ready, and informed the owner he should take it and the owner did not care to do so, the negative commandment of Lev. xix. 13, "There shall not abide," etc., does not apply here. If, however, he has delivered it to him in the middle of the day, and it is not paid by sunset, the above commandment is applied. Now, if some would bear in mind that the master acquires title on the increase, then why should the above commandment be applied? Must not the garment be considered as the property of the master? Said R. Mori the son of R. Kahana: This Mishna speaks of an old garment that was given to be cleaned and to comb the wool, where there is no increase. But, finally, if given to him to put in order, *e.g.*, to make it soft, or to clean it so that it shall look like a new one—is this not to be considered an increase? The case was that he hired him on time, then he must pay him for his time and not for the garment, and, therefore, if he had not paid him, the above passage applies. Samuel said: A butcher (even), a specialist, if he has spoiled the meat (by slaughtering the cattle not in accordance with the law) he must pay, he is a tort-feasor, and is also considered wilful in doing this damage, as he has slaughtered it not in the place where it ought to have been done, and his mission of slaughtering is not fulfilled. Why so many reasons? If it stated a tort-feasor only, one may say that the case is only when he was hired to slaughter, but if he has done it gratuitously he should be free; therefore the addition.

"His act is considered wilful." R. Hama bar Guria objects from the following Boraitha: If one has given his cattle for slaughter and they are spoiled so that they become (unfit for eating), if the butcher was a specialist, there is no liability; but if he was a layman, there is. Both, however, if they were hired, then are they liable. Samuel's answer was: I think your brain is not in regular order. The same objection was raised to it by another of the rabbis, and Samuel said to him: (Stop object-

ing,) as thou wilt receive the same answer as thy colleague. I taught this in accord with R. Meir, and you questioned me in accordance with his opponents. Why did not you give a careful consideration to my statement? Did I not say he is a tortfeasor, and considered wilful, etc., and whose theory is it that such a consideration should apply in such cases? There is only R. Meir. [Where did R. Meir state this?] In the following Mishna: If one's jug was broken (in the public street), and he did not remove it, or his camel fell down and he did not raise it (and damage was caused), R. Meir said: He must pay. The rabbis, however, say: This damage cannot be collected by the civil court; the divine court, however, makes him responsible for it. And it is declared that they differ in the case of stumbling, whether it is considered wilfulness or not. Rabba bar Hana in the name of R. Johanan said: A professional slaughterer is always responsible for his act, and even if he were expert as they of Ziphrus. Did R. Johanan, indeed, say so? Did not Rabba bar bar Hana himself say that such a case happened for R. Johanan in the congregation of Moun, and R. Johanan said to him: "Go and bring witnesses that you are a specialist in slaughtering cocks, and I will take off the responsibility from you"? This presents no difficulty. The latter was a gratuitous act, and the first case speaks of hire. As R. Sera used to say: One who likes to be sure of the responsibility of his slaughterer, he shall advance him a dinar. It happened that a case of *egressum* (in slaughtering) came before Rabh, and he declared it unlawful for use, and at the same time he absolved the slaughterer from payment. When R. Kahana and R. Asi met the owner of the cattle, they said to him: Rabh did two good things regarding you. He prevented you from using a doubtful thing, and also restrained you from possible robbery (as, if he had made the butcher pay, it would have been a robbery). It was taught: Suppose one gave a coin to a banker for examination, which was approved by him, and afterwards it was found to be of no value? If he was a specialist, he is free; but if a layman, he is responsible. So is the statement of one Boraitha. Another one, however, states that in any case the banker is responsible. Said R. Papa: The statement that he is free speaks of experts like Danki and Esau, who do not need any more experience, but they erred in the picture of the coin, which was a new one in this country, and they took it for an old one of another country, and they did not know that in this

country such a coin was just made. There was a woman who showed a coin to R. Hyya, and he told her: It is a good one. The next day she came and told him that when she showed it to other people she was told it was of no value, and she could not give it out. Then R. Hyya said to Rabh: Give her a good dinar, and write in my account book that this was a bad business (to lose money for nothing, as I should not have given a decision upon it). But why—was not R. Hyya an expert in such cases, as Danki and Esau mentioned above, of whom it was said they had not to pay for their error? R. Hyya did not go to the extreme of the law, but acted on the teaching that a generous man should always moderate the law when it is against poor people (as will be explained in the Second Gate (Chap. II.) by R. Joseph). Resh Lakish showed a dinar to R. Elazar, and he told him: It is a good one. He said then: I rely upon you. And the former rejoined: What do you mean by relying upon me—that if it will be found of no value I should change it? Are not you he who said that the decision of this Halakha is in accordance with R. Meir, who decided that laws of germon (damages which are done indirectly) shall be put in practice? Consequently the Halakha does not so prevail. "Nay," rejoined Resh Lakish, "I meant that it is according to him, and so the Halakha prevails." [And where did R. Meir state it? In the following Boraitha. The name of R. Meir is not mentioned here, and Tosphatt declares that it was known to the Gemara that this is his decision.] "If the partition which was placed between the vineyard and corn was broken, the court has to order him twice to repair it. If he, however, did not care to fulfil the order, then the products are prohibited, and the owner of the partition has to suffer the damage."

MISHNA *IV.*: If one gave wool to the dyer, and it was spoiled in the kettle, the value of the wool is to be paid. If it was poorly dyed, by reason of the kettle not being clean, if the increase in value of the wool is more than the expense, then he pays the expense only; and conversely, the increase only. If one has given wool to be dyed red, and it is dyed black, or conversely, R. Meir says: The value of the wool is to be paid. R. Jehudah says: It must be seen which was greater, the increase or the expense.

GEMARA: The rabbis taught: If one has given wood to the carpenter to make a chair of it, and he has made a bench, or conversely, the value of the wood is to be paid. So is the

decree of R. Meir. R. Jehudah says: "If the increase is more than the expense," etc. (as stated in the Mishna). R. Meir, however, agrees that such a decision applies if the agreement was to make a nice one and he made it unsightly. The schoolmen propounded a question: Is the color of the dyes to be considered as existing upon the wool, or not? How is it to be understood if one has stolen the wool and the dyes of the same man, and has dyed the wool with the same, and then returns the wool? Now, if it is considered as existing, then he has returned all he has stolen from him; and if not, he has returned him only the wool? But even suppose not, is not the price of the wool increased by that? Nay! The case was that the dyed wool became cheaper after it was stolen. Rabbina said: The question is in case the wool belongs to one and the dyes to another, and a monkey came and dyed this wool with these dyes. Shall we then assume that the dyes are considered as existing upon the wool, and the owner of the dyes can say: "Pay me for my dyes which are upon your wool"? Or, perhaps can the other say: "There is nothing that belongs to you, as the color of your dyes is not taken into consideration." Come and hear: A garment which is dyed with the rinds of fruits grown in the sabbatic year must be burned. Hence it is to be inferred that the color of dyes is considered as existing? There is a difference, as the Scripture uses the expression, "It shall be," which means: It shall always be considered as existing.

"*R. Jehudah says,*" etc. R. Joseph was sitting behind R. Abba, before R. Huna, and R. Huna said: The Halakha prevails in accord with R. Joshua ben Karcha and also with R. Jehudah. R. Joseph then turned his face, and said: It is necessary to say that the Halakha prevails in accord with R. Joshua ben Karcha, lest one say that, as there is a rule where an individual and the majority differ, the Halakha prevails as the majority; therefore he comes to teach us that here the Halakha prevails according to the individual. [What is the case of R. Joshua ben Karcha? The case of the following Boraitha, where it is said that before the pagans' holidays there should be collected from them only such debts as are not known by any writing; but if there is a note, it must not be collected.] But for what purpose was it necessary to state: The Halakha prevails according to R. Jehudah? Is this not self-evident? Is there not an anonymous Mishna after the Mishna in which they differ,

and there is a rule that in such a case the Halakha prevails in accordance with the anonymous Mishna—namely, in this First Gate, R. Meir and R. Jehudah differ in our Mishna stated above, and in the Second Gate there is an anonymous Mishna that he who has changed the order must suffer the damages, which is certainly in accordance with R. Jehudah's theory? [Said the Gemara:] R. Huna holds that his statement was necessary, because at a first glance one may say that the order of the Mishnayoth is not to be taken into consideration; and, consequently, there is not an anonymous Mishna after the Mishna which was discussed. If so, what, then, is the rule? R. Joseph may say: We can say to every anonymous Mishna which comes after a discussion that there is no order in the Mishnayoth. And what would R. Huna say to this? He might say that only in one tract is the order of the Mishna not to be taken into consideration, but in two different tracts it must be considered. And R. Joseph? He maintains that the whole of Section Damages is considered as one tract. And if you prefer, it may be said that, even to him who does not consider the whole section as one tract, the anonymous Mishna in the Second Gate, which is placed among decided Halakhas without any change, prevails.

The rabbis taught: If one has given money to his messenger to buy wheat and he buys barley, or *vice versa*, there was taught in one Boraitha that the decrease as well as increase is accounted to the messenger; and in another one, the decrease only, but the increase must be divided. Said R. Johanan: The different opinions of the Boraithas present no difficulty: one is in accordance with R. Meir, who holds that change gives title, and the other one is in accord with R. Jehudah, who holds it does not. R. Elazar opposed: How can we infer that according to R. Meir even the increase belongs to the messenger? Perhaps R. Meir spoke only of an article that one needs for his own use, but not for the market (as there is a difference which article he buys as soon as there is profit on it). And, therefore, said R. Elazar, both Boraithas are in accord with R. Meir, and present, nevertheless, no difficulty. The first means when it was bought for eating, and the other for the market. In the West they ridiculed Johanan's explanation according to R. Jehudah, for who had informed the man of the wheat that he shall pass title to the man of the money (and why should the sender get a share of the increase)? R. Samuel bar Sasarti thus opposed this: If it is so, then even when the messenger has bought the same

article he was ordered to buy, then the profit should not belong to the sender? Said R. Abuhi: Then there is a difference, because the messenger fulfilled what he was ordered, and he is considered as the owner himself.

The rabbis taught: One who buys a field in the name of his neighbor, he for whom it was bought, is not to be compelled to sell it; but if he bought it under this condition, then he may be compelled. How is this to be understood? Said R. Shesheth: It means to say the following: If, *e.g.*, one has bought a field in the name of the Exilarch, the Exilarch cannot be compelled to sell it again; but if he bought it under this condition that the Exilarch shall transfer it, he may be. Now we see that he acquires title in any case. Shall we assume that this Boraitha differs with those of the West, which said above, that title without information cannot be acquired? This question could be answered that the buyer has informed the seller, and the witnesses also, that he buys it for himself; but the latter part, which stated that the Exilarch may be compelled to sell it again, presents a difficulty. Why should not the Exilarch say: I do not want to be honored (by you in buying things in my name), and to be despised afterwards (in making me a seller of property). Therefore, said Abayi, it means thus: If one buys a field in the name of his neighbor, the seller is not compelled to write him another bill of sale upon his own name unless he bought it under this condition; but is it, then, necessary for the Boraitha to state that the seller has not to give two bills of sale in two different names—is it not self-evident? Lest one say, the buyer could claim that the seller was well informed that the bill of sale in the other's name was only a *πινακος* ("for fear that my creditors shall not claim this estate); and certainly, as I would not give money for nothing, it was with the intention I should get another bill of sale in my name." He comes, therefore, to teach us that the seller can say to the buyer: "Go and get your bill of sale from him in whose name you have bought." But where is the need of the latter part, "if he bought it under this condition," etc.? Is this not self-evident? The case was when the buyer said to the witnesses in the presence of the seller: "Observe that I want to get another bill of sale." Lest one say, the seller could claim: "I meant another bill of sale from him in whose name it was bought"; he comes, therefore, to teach us that the buyer may claim that, only for the purpose of getting another bill of sale from the seller, he

informed him in the presence of witnesses; as if not, there would not be any necessity for the seller to know this. R. Kahana paid money for flax. In the meantime the flax became dearer and the seller sold it (for R. Kahana's benefit). Then R. Kahana questioned Rabh if he had a right to take the money. And he answered: If in selling the flax it was said that it is Kahana's flax, go and take it; but not otherwise. Now, Rabh's decision is in accordance with the theory of the rabbis of the West, stated above. But did, then, R. Kahana give four (with the intention to get) eight? The flax was his, and it became dearer by itself, so that the seller who had sold it without the knowledge of R. Kahana is to be considered as a robber, of whom it is stated in the Mishna: He must pay the value when it was stolen, and the flax was already dearer. The case was that R. Kahana had not given to the man flax at all, but money to buy it at the lowest price, and he had confidence in him; and when the seller did not mention that he sold the flax of R. Kahana, the increased price of the flax, which was not as yet the property of Kahana, if he had taken it, was to be considered as usury. Rabh, however, in his decision is in accord with his theory that a trust may be made for fruit, to pay for it now and to get it when it will be dearer. He must, however, take the fruit itself, but not the money for it (as it would be like usury).

MISHNA *V.*: One who has stolen the value of a coin, even the smallest in the country, and he swears falsely that he did not take it, and afterwards confesses, he shall return it to the owner where he is to be found, even when he is in Madai. He cannot return it to his son or a messenger. He may, however, return it to the messenger of the court. In case the one robbed is dead, he may return it to his heirs. If he has returned the principal amount, but not the fifth part (that he must add) [see Lev. v.], or if the one robbed had renounced the principal amount but not the fifth part, or he had renounced both except the value of less than a *parutha* of the principal amount, he is no more obliged to go to him (for the sake of returning the part he still owes him). If, however, the fifth part only is paid or renounced, or even when both are renounced less than a *parutha* of the principal amount itself, he must go to him to return it. If he has paid the principal amount, and he took an oath that he had returned him the fifth part also, and then he confesses, he must then add a fifth part to the fifth, etc., till the part sworn off will be less than a *parutha*. The same is the case in

a deposit, as it is said [Lev. v. 21–24]: "If any person sin and commits a trespass against the Lord; if he, namely, lie unto his neighbor in that which was delivered to him to keep, or in a loan, or in a thing taken away by violence, or if he has withheld the wages of his neighbor, or if he has found something which was lost and lies concerning it and swears falsely in any one of all these which a man can do to sin thereby. Then shall it be when he has sinned and is conscious of his guilt, that he shall restore what has been violently taken away, or the wages which he has withheld, or that which was delivered to him to keep, or the lost thing which he has found, or any one thing about which he may have sworn falsely, and he shall restore it, in its principal, and the fifth part thereof shall be added thereto: unto him to whom it appertains shall he give it on the day when he confesses his trespass."

GEMARA: (If he has sworn) but how is it when he has not sworn—he must not pay? then the Mishna is not in accord with R. Tarphon nor with R. Aqiba of the following Mishna: "If one has robbed one of five persons, and he does not know which of them, and each of them says he was robbed, he shall place the robbed amount among them and he is free, so is the decree of R. Tarphon." R. Aqiba, however, says: "Such is not the way to prevent one from sinning, and he is not free unless he pays the amount to each of them." Now, according to R. Tarphon, even when he swears, he may nevertheless get free by placing the robbed amount among them; and according to R. Aqiba, even when there was no oath he must pay to each of them? Our Mishna can be explained in accord with R. Aqiba and his statement, he shall pay to each of them is only in case he has sworn, because it is said [Lev. v.]: ["Unto him to whom it appertains shall he give it on the day when he confesses his trespass."] R. Tarphon, however, maintains: "The rabbis have made an enactment even in case there was an oath, as stated in the following Boraitha: R. Elazar b. Zadok says: There was a great enactment by the rabbis that in case the travelling expenses for returning it should exceed the robbed amount, he may pay the principal amount and a fifth part of it to the court, and he may bring the trespass offering and an atonement will be made for him. Concerning this statement R. Aqiba may say that such enactment applies only when he knows whom he has robbed; but in our case, where he does not know who of the five was robbed by him (so that he cannot

return the robbed article to the right owner), the above enactment does not apply." Rabha objected from the following: "It happened with one pious man who bought of one of two persons, and he did not know from which of them, when he then came before R. Tarphon, he told him to place among them the value of the goods bought and he will then be free. When he came to R. Aqiba he told him: 'You cannot make good this act unless you will pay to each of them the full amount.'" Now if you bear in mind that R. Aqiba's statement is only when he has sworn falsely—would then a pious man swear falsely? And if one may say, that this person has become pious after he has sworn falsely—is there not a rule that everywhere the expression, "It happened with a pious one," etc., is used, it means always R. Jehudah ben Rabba or Jehudah b. Ilai, and both were always pious? Therefore said Rabha: The case in our Mishna is entirely different, it was known to him whom he has robbed, and he has confessed to him, and because at the time of the confession the robbed one did not demand he shall return him the robbed articles immediately, it is considered as if he would say, "Keep it for me," and this can only be when he has not sworn and did not need any atonement; but when he has sworn, although the robbed one would say to him plainly, "Keep it for me," he still needs an atonement, and this cannot take place until the robbed articles are returned in the hands of the robbed one.

"*He cannot give it,*" etc. It was taught, a messenger who was instructed by the creditor in the presence of witnesses. R. Hisda said: "He is considered a good messenger, so that if an accident happens to him after he received the money, it is to be charged on account of the creditor and not of the debtor, for the reason that the creditor took the trouble to appoint this messenger in the presence of witnesses, so that as soon as the messenger receives the money the debtor shall be acquitted." Rabba, however, said: "The creditor has only introduced the messenger as a man who is worthy to be trusted, and if you wish, you can send with him, but I am not responsible until the money reaches me." An objection was raised from our Mishna: "He shall not give it to his messenger." What kind of a messenger is meant? If he was not instructed before witnesses, how do we know that he is a messenger? Hence, we must say that he was nominated in the presence of witnesses (and nevertheless it is said he shall not give it to him)? R. Hisda explained that

the Mishna speaks of the robbed one's employee. But how, if the same would be appointed to receive this thing in the presence of witnesses—may then the robber give it to him? Then why does not the Mishna make this distinction, instead of the statement that he can give it to the messenger of the court? It may be said that the Mishna prefers to speak of a messenger who is to be respected at any rate, no matter through whose influence appointed, whether of the robbed one or of the robber, which is not the case with a private messenger. And with this statement the Mishna also intends to contradict R. Simeon ben Elazar of the following Boraitha, who said: A messenger of the court when nominated by the robbed one without the consent of the robber, or when even by the robber, and the robbed one has sent another messenger and took the robbed article, and before it was returned to the robbed one an accident happened, the robber has done his duty. R. Johanan and R. Elazar both said that a messenger appointed in the presence of witnesses is a good messenger, and regarding the above stated objection from our Mishna, we may say: Our Mishna speaks of a case where the robbed one has only advised a man to tell the robber that he can give him the articles robbed to deliver; for he thought that the robber had nobody to send him.

R. Jehudah, in the name of Samuel, said: "A messenger must not be made in his absence, namely: If the creditor writes to the debtor, 'Send me the money through so and so, and I take the responsibility for it'—even when he had signed this letter with his signature and with witnesses it is of no value." R. Johanan, however, said: "If it was signed and witnessed, the order may be executed."

But what is to be done according to Samuel's theory? The creditor shall pass the title of the money to the messenger, and the messenger shall be able to give a receipt in his own name; as it happened with R. Abba, who was the creditor of R. Joseph bar Hama, and the former asked R. Safra to bring it when he returned. And when R. Safra demanded the money, said Rabha the son of R. Joseph to him: "Did R. Abba give you a receipt for the amount?" and he answered, "No." Then he said: "Go and take from him a receipt first." Finally, after reconsidering, he said to him: "Even if you would have a receipt, I would not give you the money, for the reason that perhaps until you will reach him, he will be dead, and this money will belong to his orphans, so that the receipt of R. Abba would be

of no value." And when R. Safra questioned what then should be done, he replied: "Let him rather assign the amount to you with real estate, and you will give us a receipt," in your own name; as it happened that R. Papa had to collect twelve thousand zuz from one in the city of Husai, and he assigned them to R. Samuel bar Abba with the threshold of his house, and when the latter returned, R. Papa went forth to meet him even to the city of Toach.

"*If he has paid*," etc. From this is to be inferred that the fifth part is not considered a fine, but an addition to the principal; and if the robbed one dies, it must be paid to his heirs; and so it seems from the latter part of our Mishna: "He has to add a fifth part to the fifth part." And so also it is plainly stated in the following Boraitha: "If one has robbed and has sworn falsely and then he dies, the heir must pay the principal amount and the fifth part, but they are free from the trespass offering." So we see, then, that the heirs are subject to the payment of the fifth part for their father. Is there not a contradiction from the following Boraitha: "It is written 'which *he* robbed,' which signifies that only of *his* robbery a fifth must be added, but not of that of his father's"? And in addition to this, the Boraitha states: "Still one may say that so it is when neither the father nor the son has sworn falsely; but if both or one of them has sworn, the fifth must be paid. Therefore it is written [Lev. v. 23]: 'What he has taken violently away, or the wages which he has withheld'; and here the son did nothing of the kind." (Hence we see that the fifth part is considered a fine for the false oath, and not an addition to the amount? Said R. Na'hman: "This presents no difficulty. Our Mishna speaks of a father who confessed the robbery, and the Boraitha speaks when he did not." If he did not confess, then the principal amount also should not be paid? And lest one say it is indeed so, why then speak about the fifth part only? from which it is to be inferred that the principal part is to be paid, and aside of this the Boraitha cited above states: "And still one may say, the son has to pay the principal amount for the father's robbery only when both the son and father have sworn. Where we know, however, that the same is the case, when both or one of them did not swear? From the four distinct expressions of robbery, wages, lost things, and deposit from which we deduce it?" [When R. Huna had repeated this Halakha in the presence of his son Rabba, the latter

questioned: "My master, do you mean to deduce from this scripture that it must be paid, or you say is it common?" And he answered: "I said it is to be deduced from the above expressions mentioned in the scripture.] But let us see what did R. Na'hman mean by his expression, "he has not confessed"? "That the father had not confessed, but the son did; then that the son pay the fifth part for his own guilt." It may be said that the robbed article is no more in existence, and in such a case the son is no more obliged to pay even the principal amount (explained further on in Chap. X.). If so, even the principal amount should not be paid? The case was there one of real estate left by the father.) But even then this is only a loan without a note, which is not to be collected, either from the buyers or heirs? It may be said that the case was after it was already in the court. If so, even the fifth part should be paid? Said R. Huna, the son of R. Joshua: "It is because the money in question is not to be paid upon a disavowal which is to be collected from real estate only." Rabha said: "The case was that the robbed article was deposited somewhere of which the son had no knowledge when he swore. The principal is to be paid because it is still in existence; the fifth part, however, he must not pay, because the oath was not false, as he was not aware of it."

"*Except less than the value of a parutha.*" Said R. Papa: "There is no difference if the robbed article exists or not; he is not obliged to travel after him for the purpose of returning, as the fear that it may become dearer is not to be taken into consideration." Rabha said: If one has robbed three bunches of the value of three *paruthas*, and then the bunches became cheaper, three for two, even when he had returned two bunches to him, he must return the third also; and this can be proved from our Mishna where it is stated, that when he robbed leavened bread before passover, etc., he may say: "Yours is before you." From which it is to be inferred that it is so only when the robbed article exists still in the same form as it was before; but if it does not exist, he would be obliged to pay him the full amount, although it is now of no value at all. The same is the case here; although it has now no more the value of a *parutha*, he must nevertheless pay for it because it had this value before. He was in doubt, however, in the following case: If one has robbed two bunches of the value of a *parutha*, and had returned one of them, how is the

law? Shall we say: There it is no robbery, or perhaps because he has not returned all he has robbed, he must return it? Afterwards he decided that although it is not considered robbery any more, the commandment to return it is not yet fulfilled. (He must therefore return it.) Rabha was still in doubt in the following case: Where one robbing leaven before passover, etc., our Mishna states that he may say: "Yours is before you." How is now the law, when the robber, after the leaven became prohibited, has sworn that he does not possess it, and that he did not rob it; and after he confesses? Shall we assume that in case the leaven should be stolen, he would be obliged to pay for it, although in that time it was of no value? Consequently he has denied a case of money, and therefore he must repay. Or as the article is still in existence and of no value whatever, his denial is not to be considered a false one. (Said the Gemara:) This Halakha in which Rabha was doubtful to Rabba was certain, for he said elsewhere: If the plaintiff claims the defendant has stolen an ox from him and he denies it, and on the question, how then is the ox in your house, he answers: "I am a gratuitous bailee of it," and afterwards he confessed he is liable because this oath would make him free in case it would be stolen or lost; the same is the case when he swore that he was a bailee for hire, because it would make him free in case the ox should break a leg or die; and, finally, the same is the case when he swore that he had borrowed it to do labor with it, as this oath would make him free in case it should die while laboring. Hence we see that, although the article is before us, it is considered as if he had denied money, because so would be the case should it be stolen. The same is also here with the leaven. Although it is now only dust, it is nevertheless considered as money for the reason stated above. When Rabha was repeating the above stated Halakha, Amram objected from the following Boraitha: It is written [Lev. v. 22]: "And he lies concerning it," it meant to exclude, if he confesses the principal amount. How so? If the plaintiff claims you have stolen my ox, and the defendant denies, and on the question, "How, then, is my ox on your premises?" he answered: "You sold it, you have given it to me as a present, or your father sold or gave it to me as a present, or the ox ran after my cow, came by itself, or I found it wandering on the way, or I am a gratuitous, or bailee for hire, or I have borrowed it;" and he swore so, and after confessed; lest one say he

is liable for a trespass offering; therefore the above-cited verse. Hence the Boraitha contradicts Rabba's statement, and he answered: *Tardus.* This Boraitha speaks of a case that he said, "Here it is, take it." It had reference to a case that the ox was still in the meadow. The Boraitha states: "Thou hast sold it." What confession of the principal claim is then to be found in such an answer or in the answer of the defendant, "You or your father gave it to me as a present"? In case of selling he told him at the same time that he bought it and did not yet pay, or "that you or your father gave it to me under the condition I should do something for him, which I did not do, and therefore take your ox and go." But what answer is this to "I have found it wandering on the way"? should not the plaintiff claim, "If so, was not your obligation to return it to me?" Said the father of Samuel: "The answer was, I swear that I have found it as a lost thing, and I did not know it is yours."

We have learned in a Boraitha: Ben Azai said: "There are three different oaths concerning the testimony of a witness regarding a lost thing; namely, (*a*) I knew that it was a lost thing, but I do not know who found it; He knew the finder; (*b*) I know the finder some, but I do not know what he found; and (*c*) I know the finder and the article lost." To what purpose did Ben Azai state it? R. Ami in the name of R. Hanina said: "He said it to make the witness free from a trespass offering." Samuel, however, said: "To make him liable." And these two Amoraim differ in the same as the Tanaim of a Boraitha elsewhere differ, and the point of their difference is whether a germon is to be considered as pecuniary damage or not. (Explained above, p. 224.)

R. Shesheth says: "One who denies a deposit trusted to him is considered as a robber of it, and is liable even for an accident." And this can be proved from the following Boraitha: "And lie concerning," etc. In that passage we read of the punishment of telling a lie, but where is the warning against it? Therefore it is written [ibid., ibid. xx. 21]: "Neither shall he deny." Is it not to be assumed that the punishment is for the denying, even without an oath? Nay, the punishment is for false swearing. But if so, how is it to be understood the later part of the same Boraitha? It is written [ibid. v. 21]: "And swear falsely." In this passage we read the punishment, but where is the warning? Therefore it is written [v. 22]: "Nor

lie." Now as the later part speaks of swearing, is it not to be inferred that the first part speaks without swearing? It may be said in the first part also, an oath is meant which was found false by witnesses, and in such a case he is liable even for an accident; the later part, however, speaks when it was found to be false by his own confession, and in such a case he must add the fifth part to the principal amount and a trespass offering.

R. Huna said in the name of Rabh: "If the plaintiff claims a hundred zuz, and the defendant denies and takes an oath, he is free even when witnesses testify against him, because it is written [Ex. xxii. 20]: "And the owner of it shall accept this, and he shall not make it good." From this it is deduced that as soon as the owner has taken an oath, he has not to pay any more money. Said Rabha: "Rabh's theory seems to be correct in the case of a loan, as the money was taken for spending; but in the case of a deposit which ought to be returned as it was, it is still considered under the control of the owner, wherever it is." In reality, however, Rabh had said this even in case of a deposit, as the verse of the Scripture refers to such a case. R. Na'hman was sitting and repeating this Halakha. R. A'ha bar Minyumi, from R. Na'hman, objected to it from the following Boraitha: "Where is my deposit?" and the other answered: "It is lost," and the first said: "Do you swear (and so may God help you)?" And he answered: "Amen." Witnesses testified, however, that he had consumed it, he must pay its value only; but if he himself confessed, he must add a fifth part and a trespass offering. (Hence there is a payment after swearing?) And R. Na'hman answered: "The case was when the oath was taken out of court, which is not considered legal." Said the former again: "If it is so, how is the later part of the same Boraitha to be understood: 'Where is my deposit?'" And he answered: "It is stolen; do you swear," etc., and he said "Amen." And witnesses testified that he himself had stolen it, he must pay double; if, however, he confessed, he must add only a fifth part, etc., to the principal and a trespass offering. Now if it is as you say that the oath took place out of the court, can there be a double payment without the court? And R. Na'hman rejoined: "I could explain to you that the first part speaks of an oath without and the later in the presence of the court. I don't like, however, to give you an incomprehensible explanation. It may be explained that the oath was taken in the court, and it presents

nevertheless no difficulty, as the Boraitha speaks of a case when the defendant took the oath of his own volition (before he was ordered by the court to do so, in which case the oath does not make him free from payment). And Rabh speaks when the defendant took the oath by the order of the court." Said Rami bar Hama to R. Na'hman: "Let us see; the theory of Rabh seems to be not acceptable to you, why then the trouble to explain the Boraitha in accord with his theory?" And he answered: "It is only to interpret Rabh as he would explain the Boraitha." But did not Rabh deduce his theory from the above verse? It may be said, this verse is needed, that all those who must take an oath biblically swear and do not pay; and the verse is to be interpreted thus: He who has to pay, must swear, and the plaintiff must accept it. Rabha objected from the following Boraitha: "If one declares that the deposit confined to his care was stolen, and he had sworn falsely, and then he confessed and witnesses testified also against him; if his confession was before the testimony of the witnesses, he must add a fifth part and a trespass offering, but if the witnesses testified first, the double amount must be paid and an offering. Now, either explanations of an oath out of the court or without the order of it, cannot apply here because of a double payment which cannot be paid without a legal oath, and yet he must pay." Rabha therefore said: "In case of a confession, no matter if he claims it was lost or stolen, he must always add the fifth part and trespass offering, even in accord with Rabh, for he cannot deny the verse. 'And he confessed* what he has sinned' [Lev. v. 5]; and also if he claims it was stolen, and witnesses are against him, he must pay the double amount even in accord with Rabh, as this is also written plainly in the Scripture. His theory, then, is only when he claims 'lost' and swears, and witnesses testify against him without a confession on his part."

R. Hyya bar Abba, in the name of R. Johanan, said: "One who claims 'stolen' on a deposit, or of a lost article he has found, must pay double, and if he has slaughtered or sold must pay four and five fold; because he is considered as if he himself had stolen." He himself, however, objected to it from the following Boraitha: "Where is my ox?" and he answered, "Stolen." "Do you swear by God?" and he said, "Amen." Witnesses, however, testified that he consumed it; then he pays double. Now, could he then eat meat with-

* Leeser translates "he shall confess"; the Talmud, however, takes it literally.

out previous slaughtering it and nevertheless he pays only double, but not four and five fold only." It may be said that he had eaten it when it was a carcass (*i.e.*, it was killed by another one). The same said again in the name of the same authority: "If one claims stolen of a lost article which he found, he must pay double. Why so? Because it is written [Ex. xxii. 8]: 'Or for any manner of lost things, of which he can say,' etc." He said again in the name of R. Johanan: That he who claims "stolen" on a deposit is not liable for a biblical oath until he admits a part of it. Why so? Because it is written [ibid., ibid.]: "This it is," which means that a part of it is admitted; and he differs with R. Hyya bar Joseph, who says that the verse applies to the case of a creditor, and was inserted here through an error. Rami bar Hama taught: The four bailees—a gratuitous, a borrower, a bailee for hire, and a hirer —are not liable to a biblical oath until they admit a part. Said Rabha: "His reason is because in the case of a gratuitous bailee, it is plainly written [ibid.]: 'Thus it is,' and for a bailee for hire there is an analogy of expression, 'giving,' which reads in both cases. A borrower is also included in the word [ibid., ibid. 13] 'and,' which means that this case shall be equal to the former. And concerning a hirer, according to him who declares him equal to a gratuitous bailee, then the law of latter applies to him also, and the same is the case with him who declares him a bailee for hire." Said R. Abbin, in the name of R. Elia, quoting R. Johanan: "If one has claimed that a bailment is lost and swears afterwards he claimed it was stolen, and swears again, he is free from the double amount, even when witnesses testify against him; because the first oath makes him free towards the owner (and the second oath, which would not be ordered by the court, must not be taken into consideration)." R. Shesheth said: If one claims of a bailment "stolen," as soon as he has made use of it, he is free; and the reason is because the Scripture reads [Ex. xxii. 2]: "Then shall the master of the house be brought unto the judges (to swear) that he had not stretched out his hand"; from which it is to be deduced that if he *had made* use of it, he is free (from the double amount).* Said R. Na'hman to him: "Is not the three oaths: first, that I have done all my duty in taking care of it; second, that I did not make use of it; and third, that it is not under my control? Now, is it not to be assumed

* Because he is guilty of a falsehood.

that the second oath is equal to the third? As by the third, when thereafter it was known that it is under his control he must pay, the same is the case when it was known that he had made use of it?" And he answered: "Nay, the second is equal to the first, as by the first he is free from the double amount, when it was found that he was careless with it; so is the same in the case when he had made use of it."

Rami bar Hama questioned: "Is it the payment of the double amount that makes him free from the fifth part, or is it the oath which makes him liable for the double amount that frees from the same payment?" What should be the difference (between both suppositions) thus, *e.g.*, if one claims "stolen," and swears falsely, and thereafter he claims on the same "lost," and swears again and witnesses testify regarding the theft and he himself confesses regarding it, "lost"? Now, if the claim "theft," which causes the double amount, makes him free from the fifth part, in that case he was already liable for the double amount; and if the oath that causes the double amount absolves him from the fifth part, then the second oath, which did not cause the double payment, should make him liable for the fifth part? Said Rabha: Come and hear: "If one said to somebody in the market: 'Where is my ox which you have stolen?' and he says: 'I have not'; 'Do you swear,' etc., and he says, 'Amen,' and witnesses testify that he did steal, he must pay the double amount; if, however, he has confessed without witnesses, he pays the principal and the fifth part and an offering. Now, in this case the witnesses are the cause of the double amount, and if he should confess after the witnesses appear, he would not be absolved from the double payment, but from the fifth part. Now, if the oath which causes the double payment absolves him from the fifth part, why is he absolved from it even if he has confessed after the witnesses appear? Let us see. The last oath was not the cause of double payment; let it make him liable for the fifth part; we must therefore say that the money which causes the double amount makes him free from the fifth part." Infer from this.

Rabbina questioned: "If there is a case of the fifth part and the double amount with two different persons in the very same case, *e.g.*, one has given his ox for care to two persons and both claimed 'stolen,' one has sworn and thereafter confessed; and one has sworn and was denied by witnesses. How is it? Shall we assume that with one person is the Scrip-

ture particular that both the fifth part and the double amount shall not come together; but with two persons one shall pay the double amount and one the fifth part, or the law is particular that in one and the same case the above both fines shall not occur?" This question remains unanswered. R. Papa questioned: "If there is a case of two-fifths part or two double amounts with one man, how is it?" *E.g.*, if the claim was "lost," and he swore and confessed and then he repeated again the claim "*lost*," and swore and confessed again, in which case, according to the law, he should be liable for two fifth parts and one principal amount, and the same question is, if the claim was "stolen"; he was denied by witnesses after he swore and this was done twice. Shall we assume that the Scripture is particular only that two different kinds of fines should not be paid in one and the same case, and here it is only one kind; or perhaps the Scripture is particular that no two fines shall take place in the case? Come and hear. Rabha said [Lev. v.]: "And the fifth parts thereof."* Hence we see that the Scripture has added many fifth parts to one principal. Infer from this.

"If a gratuitous bailee swore it was 'stolen,' and nevertheless he paid the full amount and then the thief was found, to whom is the double amount to be paid?" Abayi said: "To the owner, because, as the bailee did not pay until he was summoned and ordered by the court to pay or swear, although he did both, the owner did not pass the title of the double amount to him." Rabha, however, says: "To the bailee who has paid the amount, no matter before or after swearing."† If the bailee was summoned, and he has sworn and then the thief was found, and when he was asked by the bailee he confessed; when, however, the thief was summoned by the owner he denied, but witnesses testified to the theft. Should the thief be absolved from the double payment on account of his confession to the bailee or not (because at that time the bailee had nothing more to do with this)? Said Rabha: "If the bailee has sworn to the truth, it is to believe that the owner has confidence in him still, and it is considered that the ox is still under his control, and therefore the confession of the thief to the bailee is to be taken in

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* In the Bible it is written in the plural, which the Talmud takes literally.

† The Gemara explains that both Amaraim made their conclusion from a Mishna in the Middle Gate, which each of them explains according to his theory, one of the first part of the Mishna and one of the second part, and as it is both too complicated and not of great importance, we have omitted it.

consideration. But if he has sworn falsely (the consequence of which is that the owner loses confidence in him), then the confession of the thief to the bailee is of no value." It was taught: "If the bailee claims the article was stolen by accident and then the thief was found." Said Abayi: "If he was a gratuitous bailee, the chance is given to him either to swear or to pay. If it was accidentally and the owner collects the double amount from the thief, or he (the bailee) pays the principal, the double amount shall belong to him, and if he is a bailee for hire, he must pay to the owner, and the trouble with the thief he must take upon himself." Rabha, however, says: "There is no difference what kind of a bailee he was. The prosecution of the thief is always upon the bailee (and for his trouble he collects the double amount, but no oath is to be ordered)."

Rabba Zuti * questioned thus: "If it was stolen by accident and the thief had returned it to the bailee, and then it dies in his house by negligence, what is the law? Shall we assume that from the moment it was stolen by accident he ceased to be the bailee of it (and so he is no more responsible), or perhaps he became its bailee again as soon as it is returned to him." This question remains unanswered.

MISHNA *VI.*: "Where is my bailment?" And he answers *lost!* Do you swear by God? etc., and he says "Amen." Witnesses testified that he had consumed it, and he must pay the amount. [If, however, he has confessed without witnesses, he must add a fifth part and an offering.] Where is my bailment? "It was stolen." "Do you swear?" and he says "Amen." Witnesses testified that he himself had stolen it, he pays the double amount. By self-confession, however, he must add a fifth part to the principal amount, and bring a trespass offering. If one robbed his father and swore falsely, and after his death he confessed and desired to return the robbed articles, he pays the principal and the fifth part to his brothers or to his father's brothers. If he does not want to pay his share, or he has not with what he may borrow from his friends, and the creditors will collect it from his part of the estate; *e.g.*, if there are three brothers, they collect from the estate a third

* He was a contemporary of R. Ashi, many generations after Abba bar Na'hmany, who is generally named "Rabba." The name, however, of the former is unknown. Some maintain that his name was Zuti, and Rabba was only his title, and some say that Zuti means "little," and he was so named to distinguish him from the former.

part of the robbed articles and the remainder from himself. If one says to his son: "I swear you shall not have any benefit from my estate"; if he dies, he may inherit; if the oath was neither in his lifetime nor after his death, then he does not inherit. He may, however, transfer his part to his sons or brothers, but if he has nothing to eat, he may borrow from his friends, and they will collect it from the inheritance.

GEMARA:* Whence do we deduce all this? From what the rabbis taught. It is written [Ex. xxii. 6]: "If the thief be found." The verse here treats of one who claims that it was stolen from him. Thou sayest so, but perhaps the verse treats of the thief himself? From the fact that the verse states further [ibid. 7]: "If the thief be *not* found," it is to be inferred that that verse treats of one who claims that it was stolen. We have learned in another Boraitha: It is written: "If the thief be found," the verse treats of the thief himself. Thou sayest so, but perhaps it treats of one who claims that it was stolen? If it states further on, "If the thief be not found," which plainly means one who claims that it was stolen, how then is the verse, "If the thief be found," to be construed? hence it refers to the thief himself.

Now, then, all agree that the verse, "If the thief be not found," refers to one who claims that it was stolen. Whence is this deduced? Said Rabha: The verse is to be interpreted thus: "If it should be found out that it is not as he claimed (that it was stolen by somebody else), but that he himself stole it, then he shall pay double."

Whence do we deduce that it is so only when he was put under oath? From what we learned in the following Boraitha. It is written [ibid., ibid. 7]: "Then shall the master of the house be brought to the judges"; that means, to put him under oath. Thou sayest so, but perhaps it means only for payment? It states further on [ibid. 10] "that he have not stretched out his hand," and it states the same thing above [ibid. 7], as there it means under oath (for it states so plainly), so also here it means under oath. It would be right according to the Tana who says that one verse treats of the thief himself and the other one treats of one who claims that it was stolen; therefore it is necessary to have two verses; but according to the Tana who holds that both verses treat of one who claimed

* Transferred from the seventh chapter of this tract from the Gemara belonging to the First Mishna there. The proper place is, however, here.

that it was stolen, why *two* verses? It may be said that one is to exclude, when he claimed that it was lost. But according to the Tana who says that one treats of the thief himself and the other of one who claims that it was stolen; and therefore both verses were necessary. Whence does he deduce as to the claim of having been lost? From the fact that it states "*the* thief" instead of "thief."

"*If one robs his father,*" etc. Said R. Joseph: "In case there are no heirs but him, he must give it for charity." Said R. Papa: "He must mention (in returning it) that this is the money he robbed from his father." Let us see (in case there are no heirs but him) why he shall not be allowed to relinquish the property to himself. Did not we learn in the Mishna stated above: "If he has relinquished the principal amount, but not the fifth part," of which it is to be inferred that it can be relinquished? Said R. Johanan: "This presents no difficulty, as the cited Mishna is in accord with R. Jose the Galilean, and our Mishna is in accord with R. Aqiba of the following Boraitha: 'It is written [Numb. v.]: But if the man has no kinsmen to whom restitution could be made for the trespass.' Could there be an Israelite that has no relatives or kinsmen? We must therefore say that the Scripture speaks of a proselyte who was robbed by an Israelite. If one robbed a proselyte and swore falsely and afterwards he repented, having heard that the proselyte was dead, he was about to bring the money and trespass offering to Jerusalem (according to the law), where he met the proselyte, who was still alive, and settled with him to keep the robbery as a loan, and afterwards the proselyte died, he acquires title on what he holds in his hands." This is the decree of R. Jose the Galilean. R. Aqiba, however, says: "There is no remedy for him (until the robbed article is out of his hand)." According to R. Jose the Galilean, he may relinquish to others as well as to himself; and according to R. Aqiba, however, neither to others nor to himself. And in the above illustration, where the robber had settled with the proselyte to count it as a loan is used only to make known the strength of R. Aqiba's theory, that even if the robbed one himself permits the robber to keep it as a loan, nevertheless he has no remedy until the robbery is out of his hand. Rabha, however, maintains that both Boraithas are in accordance with R. Aqiba's statement, that a relinquishment cannot be made when it concerns only himself, as illustrated above, but to others he may. [Said the

Gemara:] "Let us see: in accordance to both R. Johanan and Rabba, the theory of R. Jose the Galilean is that he may relinquish even for himself. If so, how would be the case in the robbery of a proselyte [Numb. v. 8] (which, as explained above, means of a proselyte), which must be returned to the priest? How can it be found?" Said Rabha: "It may be that the confession was after the proselyte's death, and this confession passes title of the robbery to the priest (when he confesses, however, when the proselyte is still alive, the robbery remains a loan as long as the proselyte is alive, and therefore after his death he may excuse it to himself)." Rabbina questioned: "If a female proselyte was robbed, how is it? It is written 'a man'; should a woman be excluded, or is it only the custom of the verse to mention a man, and the same is the case with a woman?" Said R. Aaron to Rabbina: "Come and hear the following Boraitha: It is written a man, where do we know that the same is with a woman? As it is written further (to whom restitution . . . which is restored, etc.) there are two restitutions, to include a woman (or a minor). Why, then, is mentioned a man? to teach that if it was a man one must investigate if he has some kinsman, but if a minor the investigation is not necessary (because it is self-evident that a minor, who is a proselyte, has no kinsman)."

MISHNA *VII.*: If one robbed a proselyte and swore, and afterward the proselyte died, he must add a fifth part to the principal for the priest, and a trespass offering to the altar, as it is written: (But if the man have no kinsman, etc., as quoted above [Numb. v. 8]). If, however, while bringing the money and the trespass offering to Jerusalem the robber dies, the money may be transferred to his children, and the trespass offering shall be fed until it gets a blemish, and then it shall be sold, and the money shall be used for a voluntary offering. If, however, he dies after the money was transferred to the priest of that week, his heirs cannot collect it from them, as it is written [ibid., ibid. 10]: "Whatsoever any man gives to the priest shall belong to him." If he has given the money to the department of Jehayary, and the offering to that of Jadaiah in the next week, he has fulfilled his duty. If, however, he has transferred the trespass offering first, and the next week he has given the money to the other department, if the consecrated animal is still in existence the priest of the second week may offer it; and if not, he has to bring another trespass offering, as the law

is that if he had returned the robbery before the trespass offering he has done his duty, but not otherwise. If he has returned the principal only without the fifth part, the latter does not prevent the offering of the trespass offering (but he must afterwards add the fifth part).

GEMARA: The rabbis taught: It is written "Asham" (the debt), it means the principal amount; "which is restored" means the fifth part. (But perhaps the word "Asham" means the ram [What is the difference? To exclude Rabha's theory, who said elsewhere: The robbery of a proselyte, when it was restored in the night-time or it was returned in halves, the duty is not fulfilled. Why so? Because the Scripture names it "*Asham*," and as an Asham cannot be brought during night-time, or in halves, for the same is the case with the returned robbery.] of the offering, as it is frequently so called. As at the end of the same verse it is written: "Beside the ram of the atonement," etc., hence the former word must be explained (the amount) as stated above.)

Rabha said again: "The robbery of a proselyte which contains not the value of a *parutha* to every priest who is in divine service at that week, the duty is not fulfilled." Why so? Because it is written [ibid., ibid.]: "The Asham which is restored," of which is to be inferred that a restore of any value may be made to each priest. He said again: (If there were two robberies of two proselytes, which were restored to the priests) they have no right to say: "A part of us will take the one restored robbery against the other restored robbery. *You* may take." Because in the Scripture it is called *Asham*, it cannot be divided.

Rabha questioned: "The priests who receive the robbery of the proselyte, are they considered heirs or only receivers of a donation?" What is the difference? If one has robbed leaven of which the passover was passed (which has no legal value), if they are considered heirs, then they must take it as their inheritance; but if they are only receivers of a donation, this cannot be called a donation, as it has no value and they must not receive it. Come and hear: "There are twenty-four gifts of the priesthood given to Aaron and his sons (this Mishna will be translated in Tract Hulin), and then the robbery of a proselyte is mentioned, hence it is considered a donation."

"*If, however, he dies after the money was delivered*," etc. Said Abayi: "Infer from this that the robbed money when returned atones for the half, because if this would not be the

case, it would state that the money must be returned to the heirs. Why so? Because when he has returned the money, he has not had in mind to leave it there without offering the trespass offering." "If so, let a sin-offering, which remains after its owner is dead, be considered as a common animal, because when he has separated it for a sin-offering, he did not bear in mind that he will die before offering it." (This is no question) as there is a tradition that when the owner dies after separating a sin-offering, the animal is to be put to death; and the same tradition is in case of a trespass offering, that when a sin-offering is put to death, the trespass offering is to be fed until it becomes a blemish.

APPENDIX TO PAGE 253.

"*R. Ashi the first.*" There is a mark in the text by Boaz: "Perhaps R. Ashi the first or the expression 'R. Johanan was astonished' was said by R. Ashi himself." The second supposition, however, does not hold good, as farther on the Gemara adds: "R. Jose b. Hanina accepted," etc.; and the latter, who was a Tana, was certainly many generations before author of this paragraph, unless this also would be the continuation of the author's declaration; but then he would add: "*and* R. Jose," etc. Hence the *first* is correct.

CHAPTER X.

REGULATIONS REGARDING ROBBED ARTICLES WHICH REMAIN AFTER THE DEATH OF THE ROBBER.—IF ONE RECOGNIZES HIS STOLEN ARTICLES AT THE PREMISES OF SOME ONE.—REGARDING ROBBED ESTATES, AFTERWARDS THE GOVERNMENT TOOK IT AWAY, ETC.

MISHNA *I.*: If one has robbed an edible article and used it for his family, or he left the article as it was, his heirs are free from payment. If, however, it was an article of responsibility, they are obliged to pay. (The Gemara will explain the meaning.)

GEMARA: Said R. Hisda: "If one has robbed an article of which the owner did not renounce the hope of gaining it, and another one came and took it away from him, the owner may collect it from any one of them he chooses. Why so? Because as long as the owners did not renounce their hope, it is considered as it were still under their control." [And our Mishna, which states that the heirs are free from payment, is in case that the hope of regaining was already renounced.]

"*Or he left the article*," etc. Said Rami bar Hama: "From this statement is to be inferred that the control of an heir is the same as the control of a buyer (*i.e.*, as the Mishna speaks of a case where the hope of regaining it is renounced, the change of control gives title, and the control of the heirs after the death of the robber is also considered a change as if it would be bought by somebody else)." R. Rabha, however, said: "It is not so, and our Mishna, which makes them free, treats of a case where the heirs have already consumed the article after the death of their father." But from the latter part of our Mishna, which states that "if there was a responsibility," etc., it must be said that the first part treats of the robbed article still in existence. Said Rabha: "When I will die, R. Oshiah will come to thank me, for I always try the Mishnayoths (edited by Rabh) with the Boraithas taught by him, and our Mishna also is in accordance with the following Boraitha of R. Ashiah: "If one has robbed and used the article for his family, the heirs are free from payment. If, however, the article remains, they have

to return it; if the article is no more in existence—*i.e.*, they have consumed it—they are free, unless their father left them real estate, in which case they must pay at any rate." R. Ada bar Ahaba taught: The difference of opinion between Rami bar Hama and Rabha in connection with the following Boraitha: "If one left money made by usury for his heirs, although they know of the case, they are not obliged to return it." And the above statement of Rami bar Hama was deduced from this. But Rabha is of the opinion that nothing is to be inferred from this case, which is entirely different, as the verse reads: "*Thou* shalt not take of him any usury or increase." The Torah advises him he shall return the usury to him for the purpose he shall stand in favor with him, and this is only said to the usurer himself, but not to his children.

One who taught the statement of Rami bar Hama and Rabha in connection with this Boraitha, the same is to apply furthermore in connection with our Mishna, and according to them who taught it in connection with our Mishna, it can be said that in the case mentioned in the Boraitha Rami bar Hama agrees with Rabha.

The rabbis taught: "If one robbed an edible article and he used it for his children, the children are free from payment; if, however, the article is yet in existence after the death of the robber, and the children are grown up, they must pay; but if they are still minors, they are free; and even when they are grown up, if they say: 'We know the accounts of our father with you, and he owes you nothing,' they are free." (This Boraitha was corrected so by Rabha.) We have learned in another Boraitha: "The children are free only when the robber used it for his family; but if a robbed edible article is in existence, his heirs, whether grown up or minors, are obliged to return it." Rabha said: "If their father left for them a cow borrowed for labor, they may use her for the time she was borrowed; if she dies even by an accident (and not while laboring), they are free. If they thought that she was the property of their father, and they slaughtered and consumed her, they have to pay the value of her meat in low prices. If, however, their father left real estate, they have to pay anyhow."

The rabbis taught: It is written [Lev. v. 23]: "He shall restore the robbed article which he has robbed."* Why the repetition "which he has robbed"? To teach that he shall

* Leeser translates the sense of it. The Talmud, however, takes it literally.

restore it in the same manner it was robbed; and from this the sages said: "When he has robbed an edible article, and he makes use of it for his family, they are free from payment; but if still in existence, grown up as well as minors are obliged to return it." In the name of Symmachos, however, it was said that if the heirs were still minors, they are free.

The brother-in-law of R. Jeremiah (who was a minor) shut the door in the face of R. Jeremiah (who wanted to inherit it for himself). When the case came before R. Abbin, he declared that the minor has a right to do so, because he demands *his* property. Rejoined R. Jeremiah: "But I have witnesses that I have used this room while my father-in-law was yet alive, as he had transferred it to me." Rejoined R. Abbin: "But can, then, the testimony of witnesses be taken in the absence of the other party (your opponent is yet a minor)?" And R. Jeremiah said again: "But have we not learned that minors as well as grown up, etc., must return?" And he rejoined again: "Is not Symmachos, who said that minors are free, your opponent?" R. Jeremiah objected, saying: "Are you ignoring the opinion of the sages, and agree with Symmachos only for the purpose that I shall lose my case?" This case was talked about by the people until it came to the ears of R. Abuhu, who said: Did you not hear what R. Joseph bar Hama declared in the name of R. Ashiah: "If a minor compelled his slaves to take away a field from another, claiming it belongs to him, we must not wait until he will be of age to sue him, but immediately the field must be returned, and when he will be of age he shall then bring evidence"? (Said the judge:) "What comparison is this to our case? There the minor was the plaintiff and took possession of an estate against the law, but here the minor is the defendant, and he is in the right possession of his estate which was occupied by his father."

R. Ashi the first said in the name of R. Shabathai: "The testimony of witnesses can be taken even in the absence of the parties." R. Johanan (when he heard this) was astonished, saying: "How is it possible to accept witnesses not in the presence of the parties?" R. Jose bar Hanina, however (his disciple, who was a judge), had accepted this theory in case one of the parties or witnesses was sick, or the witnesses had to go to the sea-countries, or it was sent by the court after him and he did not appear. R. Jehudah said in the name of Samuel: "Witnesses may be accepted even not in the presence of the

parties." Said Mar Ukba: "Samuel explained it to me that this is in case issue was already joined for the hearing of the case, and he was sent for and he did not appear; but if he was only summoned by the court and his case was not yet opened, he may say: 'I will go to the Supreme Court (in Jerusalem).' But if such a claim be listened to he may claim it even when the court was opened for his case?" Said Rabbina: "It means when an order from the Supreme Court was already issued that this case should be decided by the Supreme Court."

Rabh said: "A document may be approved even not in the presence of the party." R. Johanan, however, says: "It must not." Said R. Shesheth to R. Jose bar Abuhu: "I may explain to you the reason for R. Johanan's statement as follows: It is written [Ex. xxi.]: *And warning has been given to his owner, and he has not kept him in.* The Scripture means that the owner of the ox must come to the court and be present when his ox will be judged." Rabha, however, says: "The Halakha prevails, that a document may be approved even in the absence of the party, and even if he is objecting, but if he asks to suspend the case for a certain time, that he should be able to bring evidence against the document, the court may allow it. If he appears in time, then it is good; if not, the court suspends it for the three next sittings; and if he does not appear, the court shall give him ninety days' time before his estate shall be sold for this debt. The first thirty days we do not sell his estate, to give him time to get cash. The second thirty days we give him time to sell his goods himself, and the third thirty days also when he claims that he has a buyer for his estate, but the buyer is not yet ready with cash. After the above time a warrant is to be given to the plaintiff, that he may sell the estate of the defendant. All this is done only when the defendant desires time, but if he says, 'I will not go to the court any more,' a warrant is given immediately. And this is only by a creditor, but in case of a deposit, a warrant is issued immediately, but only when the debtor possesses real estate, not upon personal property; and the reason is, if the creditor would have a right to take the personal property immediately under his control, he may sell it, so that in case the defendant afterwards will bring evidence that the document was of no value, his property could not be returned to him in case the creditor does not possess real estate; but if he does, a warrant may be issued even in this case." (Says the Gemara:) "In practice it is not so; a

judgment is not issued on personal property, even when the creditor possesses real estate, as in the meantime he can sell his real estate, as it will go down in price."

It is also an obligation on the court to give notice to the defendant that his property will be sold, if he is near by; but not if he is far away and there are no relatives; but if there are, or there is a caravan by whom he can be notified, he is notified that this will occur after twelve months, until the caravan should make its tour and return. As Rabbina did in case of Mar Aha, where he postponed the selling for twelve months, the time which it takes for the caravan to tour and retour from the country of Husia. [Also this was not produced] as the above case is different; the defendant was a mighty man, and if the warrant would appear before him, it could not be collected from him, and therefore he was only notified that a warrant would be issued (and it was issued in such a moment that he could do nothing); but in another case the warrant was to be suspended only until a messenger had time to return with the answer of the defendant, about three or four days.

Rabbina said: "A messenger of the court should be trusted as two witnesses in case of putting a man under the ban; but if he testifies, in such a case where the man must be notified that, if he will not follow the order, he will be put under the ban, he may not be listened to unless the scribe is paid for issuing it."

Rabbina said again: "If a summons was sent with a woman or with his neighbor, who are going to the city where the defendant resides, and he does not appear, he may be put under the ban (as generally the above have fulfilled their promise to bring him the summons). But this is only when he lives out of the town; but if he is in the city, he is not to be put under the ban, because the former, through whom the summons was sent, may rely upon the court that it will send its own messenger, unless he was summoned by the messenger of the court."

Rabha said: "If one was notified that he will be put under the ban if he will not appear before the court, this writing must not be destroyed until he appears (even if he says *he will do so*), and if such was issued for not obeying the order of the court, it shall not be destroyed until he follows the order." [The latter case is not practised, but it is destroyed as soon as he promises to follow the order.]

R. Hisda says: "A note concerning putting under ban is to be used only when he was summoned for the three days when

the court was sitting (Monday, Thursday, and Monday again), and only the following Thursday to be issued."

R. Asi happened to be in the court of R. Kahana, and saw that a woman was summoned in the afternoon, and on the morrow, when she did not appear, he issued a notification that she would be put under the ban. Said the former to him: "Does not the master hold the decision of R. Hisda stated above?" And he answered: "This was said only when the man is not in the city, but for this woman, who is sure to be in the city and summoned, it is a contempt of the court and must be punished." R. Jehudah said: "One must not be summoned by the court on the eve of a Sabbath or a festival (or when he is a student), not in the days of the months Nison and Tishri (as then the college examination took place), but a summons may be issued in these days to appear after the above months. On the eves of Sabbaths and festivals, however, even to appear after Sabbath or festival is not to be issued, because he is then busy to prepare for the following day and the summons may escape his mind." R. Na'hman said: "One must not be summoned verbally to appear on Monday, on the Sabbath before it when he comes to hear the lecture, and also on the day when he comes to hear the lecture of the coming festival. (It was usually lectured thirty days before each festival.) He shall appear on some day afterwards (for fear they will restrain from coming to the lecture). When people used to come to R. Na'hman in the days mentioned above with claims against some of the assembled people, he used to say to them: "Did I assemble them for your benefit?" [Said the Gemara: "Now when the time is changed and swindle is used, no attention may be given to all the terms said above."]

"*If, however, it was an article of responsibility*," etc. Rabbi taught his son Simeon: "Not only real estate, but even an animal which they use for labor, they are obliged to return for the honor of their father." R. Kahana questioned Rabh: "How is it with a bed or a table which they are using?" And he answered [Prov. ix. 9]: "Give to the wise (instruction) and he will become yet wiser." (It means the same is the case with all other things.)

MISHNA *II.*: Money must not be changed from the treasury of duties, and not from the treasury of the treasurers for charity, and also charity must not be taken from them; it may, however, be done with the private money of the above treasurers, or when it is in market charity may be accepted.

GEMARA: A Boraitha, an addition to the above statement, teaches: "He may take change from a dinar if he has to pay a part of it." "Treasury of duties." Why not? Did not Samuel say: "The law of the government must be respected as the law of the Torah." Hence the duties must not be considered robbery? Said R. Hanina bar Kahana in the name of Samuel: "The Mishna treats of a contractor who paid the government the duties of the inhabitants, and he collects from them as much as he desires, and in such a case it is considered robbery." The disciples of R. Janai say: "The Mishna treats of a duty not established by the government (but by some mighty people of the city)." According to others, the above statements of Samuel and R. Janai were delivered in connection with the following Boraitha: "Vows may be made before murderers or contractors of duty concerning the heave-offering or concerning the royal treasure (*i.e.*, if one vows it shall be forbidden to consume any fruits, if these fruits do not belong to one of the above-mentioned)." And when it was questioned: "Why the contractor of duty is counted among murderers," etc., the above explanations of Samuel and Janai were given. R. Simeon said: "R. Aqiba when he came from Zefiru lectured as follows: "Whence do we deduce that the robbery of a heathen is prohibited?" It is written [Lev. xv. 48]: "After he has sold himself, shall he have the right of redemption" (the verse treats when a Jew has sold himself for a slave to a heathen), which means that even when the Jewish court has the might to get him free without money, they must not do so unless the heathen is paid the full amount, as it is written [ibid., ibid. 50]: "And he shall reckon with him that bought him," etc.

R. Ashi happened to be on the road and saw a vineyard in which some grapes were ripe, and he said to his servant: "Go and see, if it belongs to a heathen, bring me some; and if it belongs to a Jew, do not." The owner of this vineyard, who was a heathen, heard this, and questioned him: "Are the goods of a heathen allowed to be robbed?" And he answered: "I meant, if the owner is a heathen, he will take money for it, but a Jew would not take money from me; and I do not want to have it for nothing." The text states: Samuel said: "The law of the government is to be respected," etc.

Said Rabha: "This is proved by the fact that we pass the bridges which the government made, although they take beams of the estate belonging to private estates." Said Abayi to him:

"Perhaps we do so because the owners of the beams in question have renounced their hope to regain it." And he answered: "If the law of the government should not be respected as the law of the Torah, why should the owners of the beams renounce their hope? The officers of the government do not usually do as they are ordered. The order is, they shall cut off trees of all the *pagus* (*e.g.*, one owner shall not suffer too much and the other nothing), and the officers cut off from one *pagu* which is more prehensible to them. All beams they need, and nevertheless we pass the bridges which were made of such beams; and this is because the officers of the government are considered as the government itself, which needs not to take the trouble searching any other *pagus*, where the beams in question are to be found, and it is only the fault of the citizens, who have not prepared the necessary material for the bridges from the *pagus* where such material can be obtained, and take money for it from the government."

Rabha said again: "If there were four partners to a barn, three of them took out the grain of it, and when the collector of duties came he found only the share of the fourth partner. He may take from it for all the four partners, and it is not considered robbery, even if the collector was a contractor of the government. The case, however, is when they were partners; but if some of them were only gardeners, who took for their trouble a share of the grain, the collector has not to take the duties for them who are absent, because the gardeners only took what belonged to themselves."

The same said again: "A contractor of the government has the right to pledge a fellow-citizen for the duty of another citizen of the same city (who stands with him in business connections), as so the law of the government is in case it is a duty from the fruits of the land or from this year; if, however, it is from the last year, for which the contractor has paid already to the government, he must not do so." The same said again: "Heathens who live in the limit of a Techum * of the city, who possess cattle and they are hired to dung the fields, one may not buy an animal from them, for fear it may be Jewish cattle, as they usually feed the Jewish cattle together; but if they live out of the limit of the Techum, it is allowed." Said Rabbina: "If some Jews of the city are claiming that their cattle are among the cattle of the heathens, even out of the limit, is also

* Sabbath limit. See Erubin, page 100.

prohibited." Rabha, according to others R. Huna, publicly announced: "It shall be known to all who are going down to Babylon or going up to Palestine that an Israelite who is testifying for the sake of a heathen, without being invited as a witness, when the defendant is an Israelite he may be put under the ban. Why so? Because the heathen collects money by the testimony of one witness (and the Scripture requires two witnesses). This is only in case when he is the only witness; but if there are two, they must testify even when they are not called up; and this is also only when the case is brought up in a court of violence, but in the court of a *Dower* (a Persian prince) they may testify, as they also in such a case order only an oath." Said R. Ashi: "When I was in the court of R. Kahana * we were questioned: "A respectable man upon whom the above court would rely, as upon the testimony of two, and he is the only witness, should he not testify, because the money would be collected upon his testimony, or because he is a respectable man it would be against his conscience if he does so? This question remained unanswered.

MISHNA *III.*: If the contractors took away his ass, (and after complaining) they returned him instead of his another one, or he was robbed of a garment, and another one was returned to him instead by the robbers, he may take it, as usually in such cases the owners renounced the hope of regaining it. If one saved an estate from the stream or from robbers, if the owners of it have renounced the hope, he may keep it. The same is the case also with a swarm of bees. R. Johanan ben Broka, however, says: "A woman or a minor is trusted when they show the place whence this swarm was coming. One may also run through the field of his neighbor to save the above; if, however, he causes damage, he must pay; but one has no right to cut up a branch of a tree, although he pays for it." R. Ishmael his son, however, allows even this.

GEMARA: A Boraitha, however, states (that if he takes a stranger's ass from the contractor, and he is afraid it may be considered robbery, he has to return it to the first owner and not to the contractor, although the title is acquired as soon as the hope of regaining is renounced; here with a contractor it is different (and the title does not pass to the contractor).

Said R. Assi: "The statement of the Mishna applied only when the robber was a heathen, but not if he were an Israelite,

* The text reads Huna, but by the correction of Asher it is Kahana.

because he thinks of summoning him to the court." R. Joseph opposed: "It seems to be, on the contrary, that as the heathen courts are very powerful, they do not renounce their hope because they think of summoning him." But if the robber were an Israelite, whose courts are not so powerful, he usually renounces hope. Therefore if this statement was made by R. Assi, it was on the latter part of the Mishna: "If they renounced their hope, it is his." Upon this it was that R. Assi said: "This applies only to a heathen. But if the robber were an Israelite the same is the case even if it were not certain that they had renounced their hope."

There is a Mishna [Kelim, xxvi. 8] about skins when they were stolen or robbed. In the first case the intention of the thief is not to be considered, because in such a case usually the owners do not renounce their hope; and R. Simeon is of the opinion that in case of a theft the owners do renounce their hope, but not in the case of a robbery; and Ula said that they differ when there is a supposition only, but if it is *certain* that the owners have renounced, all agree that title is acquired.

Rabba, however, says that they differ even when it is certain. Said Abayi to Rabba: "You may not differ with Ula in this case, because the quoted Mishna which states 'that usually the owners do not renounce their hope, of which it is to be inferred that only when it is supposed so, but if it is certain that they have renounced their hope, title is acquired.'" And he answered: "We read in the above quoted Mishna not as stated, but 'because the renunciation of hope is of no avail.'" There is an objection from our Mishna if the contractor took his ass, etc., which states *he may keep it because usually the owners renounce their hope.* Now, according to whom should be our Mishna? If in accordance with the opponents of R. Simeon, then the robbery mentioned in the quoted Mishna would be a difficulty; and if in accordance with R. Simeon, the theft mentioned there would be a difficulty, too. Still it would be correct in accordance with Ula's theory, who says that when it is certain all agree, etc., then our Mishna could be explained that it means when it was certain; but according to Rabha's theory, in accordance with whom is our Mishna? Our Mishna can be explained that it treats when the robber was armed, and in accordance with R. Simeon. But is this not the same robbery as by a contractor? The Mishna mentions two cases of robbery, one who is protected by the government, and one who is

persecuted by the government. Come and hear: "A thief, a robber, and an oppressor (who takes an article and pays for it against the will of the owner), if they have consecrated the article in question, or if they have separated heave-offering from the robbed grain, it remains so. Now, according to whom would be this Boraitha: "If with the rabbis, robbery would be a difficulty," etc? This Boraitha is in accordance with Rabbai, who says elsewhere that there is no difference between a thief and a robber, and it is explained further on that Rabbai means the kind of a robber mentioned by R. Simeon, who acquires title, and not of the robbers who do not. "A swarm of bees," etc. What means the Mishna with the expression "also"? It means to say that although a swarm of bees is only an enactment of the rabbis, that one can claim he is the owner of it, to prevent quarrels, and one may say that while it belongs to him only rabbinically, he renounces his hope immediately; it comes to teach us that the same is the case here also.

"*Said R. Johanan ben Broka,*" etc. Are, then, a woman and a minor qualified to be witnesses? Said R. Jehudah in the name of Samuel: "This case was when they ran after it, and the two in question had showed him the place whence the swarm of bees was coming, but they were not called as witnesses." R. Ashi, however, said: "One who relates a thing without intention of testifying has a value only in case of a widow, who needs evidence that her husband is dead." Said Rabbina to him: "Is it not just mentioned that such a relation is valued also in the case mentioned above?" And he answered: "A swarm of bees is different, as the owner of it is only made rabbinically." [And in case where it is biblically, is it not valid?] Did not R. Jehudah say in the name of Samuel: "It happened with a man who was talking without any intention as follows: I recollect when I was a child, upon the shoulders of my father I was taken from the school, and they dressed me and put me in a legal bath, so that I should be able to partake of heave-offering at the night meal." And R. Hanina added this tale: "My comrades reported themselves from me and called me Johanan the eater of cakes." And Rabbi established him as a priest for this tale. In the time of Rabbi (after the destruction of the temple) heave-offering was only rabbinical. And still in a biblical case such is not valid? Did not R. Dimi say in the name of R. Hana or Aha of Carthagena: "It happened in the court of R. Joshua ben Levi, according to

others in the court of Rabbi, with a child who was telling: 'It happened that my mother and I were prisoners among the heathens, and I did not turn away my eyes from my mother. When I was going to draw water, or to gather some wood, I did not stop thinking of her,' and upon this telling Rabbi married her to a priest (to whom it is prohibited to marry a suspicious woman). In the case of a woman prisoner they dealt leniently."

"*He shall not cut up a branch,*" etc. We have learned in a Boraitha R. Ishmael ben R. Johanan ben Broka said: "It was decided by the court that one may descend in his neighbor's field, or cut up a branch of his neighbor's tree, for the purpose to save his or somebody else's swarm of bees, and the value of the branch shall be paid from the swarm of bees; and there was also another decision of the court, that if for the purpose of saving one's honey he must spill out his own wine, he must do so, and the value of his wine he shall collect from the honey he has saved; and the same is the case when he has wood on his wagon and he sees that one's flax is in danger, he must throw off his wood to place the flax instead, and the value of the wood he may collect from the flax, because under this condition Joshua to our ancestors inherited the land."

MISHNA *IV.*: If one recognizes his utensils or hooks by another, and it was announced that such things were stolen, the defendant must swear how much he has paid and collect it by returning the articles. If, however, it was not announced that such articles were stolen, he is not trusted to say so, as it can happen that he himself sold it, and the buyer sold it again to the defendant.

GEMARA: And even when it was announced that there was a theft, what is it? There may be still a suspicion that he sold it and then he announced it was stolen. Said R. Jehudah in the name of Rabh: "The case was that in the same night, when the theft happened, visitors were coming to him and found him crying that his articles were stolen. But still (if he is a suspicious man) it can be said that seeing that men are coming to him, he began to claim of the recent theft." R. Kohana completed the above statement of Rabh, that the case was that men who were staying over night in his house, it was found afterwards they were robbers, and they took with them packages with utensils, and it was murmured that his articles were stolen. Said Rabba: "All what is said above is to be feared in

case the plaintiff was known that he used to sell his utensils, but not otherwise. But cannot it happen that even when it was not his custom to sell out when he was in need, he nevertheless did sell all his articles?" Said R. Ashi: "Therefore the Mishna states that it was known in the city that his utensils were stolen."

It was taught: "If a thief has sold out the stolen articles and after it was recognized that he is the thief, Rabh in the name of R. Hyya said that the plaintiff may deal with the thief only." And R. Johanan in the name of R. Janai said that he may deal with the buyer only (*i.e.*, he can take the stolen things without any payment). Said R. Jose: "They do not differ: the one who says that he has to do with the buyer means, in case he bought it before the owner of the article has renounced his hope of regaining it, and the one who says that he has to do with the thief only, means that the sale was after the hope was renounced, and both agree with the theory of R. Hisda" (*supra*, p. 251). Abayi, however, said: "They do differ, as we find elsewhere concerning the gifts of cattle belonging to the priest, which must be considered always that the hope of regaining is not renounced, and they differ there also." But what is the point of their difference? They differ about the statement of R. Hisda just quoted. R. Zebid, however, said: "The point of their difference is this: In case the hope of regaining was renounced when it was already in the hand of the buyer, one holds that when the hope was renounced after the control was changed it does not give title, and the other one holds that it is no difference." R. Papa says: "All agree that the articles must be returned to the owner, and they also agree with R. Hisda, that the plaintiff may summon him who is more convenient for him, and the point of their difference is, if the enactment which is made for the benefit of one who buys a thing publicly in the market, without knowing that it is a stolen article, shall come to his money if the article is found to be a stolen one. According to Rabh this enactment does not apply here, and the buyer must look for his money from the thief; and his above statement, *he has to do with the thief*, means the buyer and not the owner. And R. Johanan holds the above enactment applies here, and he may look for his money from the owner. Is Rabh, then, of the opinion that this enactment does not apply here? Did not R. Huna, who was the disciple of Rabh, say to the plaintiff who claimed the article from the buyer

who bought it from Hanan the bad, who stole it, Go and redeem it? With Hanan the bad it is different; as he possessed nothing, it is considered as if the thief would not be recognized at all."

Rabba said: "If the thief was a notorious one, the above enactment does not apply." But was not the above Hanan the bad a known one, and nevertheless the same enactment was enforced? He was known for a bad one, but not for a thief. It was taught: "If a thief has paid his debt with a stolen article the above enactment does not apply, because the creditor did not give him the money with the intention of collecting it from such articles. When, however, he lends upon this article to the half of its value, the above enactment may apply; when, however, he lent the full value, Amemar said: "The enactment in question does not apply." Mar Zutra said: "It does." If he has sold it for the full value, the enactment applies; if for half the value, R. Shesheth maintains: "It does not"; and Rabha maintains: "It applies." And the Halakha prevails, that in all cases the same enactment is to be practised, except when the thief pays his debt with it. One man lent four zuz from Abimi bar Nazi, the father-in-law of Rabbina; afterwards he stole a garment and brought it to his creditor, and he lent him four more zuz; finally it was recognized that the garment was stolen, and Abimi came to ask the law of Rabbina, and he said: "The first four zuz he cannot collect, as you have collected it already from the stolen garment (for which no enactment is made). The latter four zuz, however, you may collect, and return the garment." R. Kahen opposed: "Why shall we not assume that the first four zuz he had collected from the garment, which are not to be returned, and the last four zuz he (Abimi) trusted the thief without any pledge as he did before?" The case was not decided until it came before R. Abuhu, and he decided that the Halakha prevails in accordance with R. Kahen. One of the city Narsha stole a book and sold it to a citizen of Pepunian for eighty zuz; the latter sold it to a citizen of Mehuza for a hundred and twenty zuz. Said Abayi: "The owner of the book shall pay eighty zuz to the Mehuzan man and shall take his book, and the forty remainder the Mehuzan man shall collect of the Pepunian." Rabha opposed: "When the enactment was made, even when he bought from the thief himself, shall it not apply to him who bought it from the buyer?" Therefore he decided that the owner shall pay to the Mehuzan one hundred

and twenty, and he shall take his book, and then he shall collect the eighty from the Narshian and forty from the Pepunian.

MISHNA *V.*: If one has emptied his barrel which was filled with wine, and saved in it the honey of his neighbor's broken barrel, he receives only the value of his barrel and for the labor he has done; if, however, he told the man of the honey, "I will save yours in case you will pay me for my wine," he must do so. The same is the case when a stream has overflowed two asses, one of one hundred and one of two hundred, and the owner of the one hundred saved the two hundred one, he has to be paid for his trouble only, unless he has made this condition with his neighbor before saving.

GEMARA: But why so? Let him (the man of the wine) say: "Was not your honey at the time I saved it ownerless? If I had not saved it, it all would be lost, consequently I may take at least for my wine." The case was when the owner of the honey could save it only with great trouble.

"*If, however, he told,*" etc. But cannot the man of honey say, I was only jesting? Is not the case similar to the case of the following Boraitha: "If one runs away from prison and he says to the boatman, 'I will give you a dinar if you will pass me,' he shall pay him only what is due to him"; hence he can say, what I said a dinar was only jesting, why not the same in our case? Our case is to be compared with the later part of the same Boraitha; namely, "If, however, he says: Here is a dinar, take it and pass me, he may keep the whole dinar for his job" (and so in our case when he gives him the honey for the purpose of saving it, it is considered as if he had paid him in advance). But what is the reason for this statement? Said Rami bar Hama: "The case is when the man of the boat has caught fish at the same time he was waiting for passengers, and he may claim that he could make the same money catching fish."

"*With a stream,*" etc. And both cases were necessary to teach; namely, if the first only would be stated, one may say, because it was so spoken of, that he shall lose his own wine for the purpose of saving the other's honey. But in the other case, which was accidental, it is not so; and if the latter only would be stated, one may say because it was an accident he gets only for his trouble when it was not arranged otherwise; but in the first case, when he has destroyed his property for the benefit of the other he must be paid, even when it was not spoken of; therefore both are stated. R. Kahana questioned Rabh: "If

the condition was made, he shall save the two hundred one, and for his one hundred ass, which would be lost, he shall be paid; and he descended and did so, and in the meantime it happened that his own ass was saved by itself, what is the law?" And Rabh answered: "The agreement shall be fulfilled nevertheless, and the saving of his ass is heavenly favor. As it happened with R. Safra, who was going with a caravan and a lion had followed them, and every night the caravan used to throw an ass for the lion; when the time arrived that R. Safra should throw his ass he did so, but the lion did not touch it, and on the morrow he took it back and acquired title of it." R. Aha of Difti questioned Rabbina: "Why was it necessary for R. Safra to acquire title to it? It is true he renounced his ownership of it, but it was done only for the sake of the lion, but not for the sake of others." R. Safra did so to prevent murmur of those who are not thoroughly acquainted with the law.

Rabh questioned Rabbi: "What is the law when upon the above condition he descended to save the ass, but did not succeed?" And he answered: "Is this a question? Certainly his trouble only is to be paid." Rabh objected from the following Boraitha: "If one was hired to deliver some medicine to a sick one, and he finds him dead or cured, the messenger gets his full payment?" And Rabbi answered: "What comparison is this? There the messenger has fulfilled his mission, but here he did not."

The rabbis taught: "A caravan in the desert which was in danger of being destroyed by robbers, and they paid for their redemption, the sum must not be collected equally from each person, but proportionately to the amount each of them possessed. If, however, they have hired a guide, each of them should pay his share equally. At any rate, it must be done according to the custom of the caravan. The drivers are allowed to make a condition with the proprietors, that in case an ass will be lost, they shall furnish them another ass. If, however, the ass was lost by wilful negligence, they are free. But if he says: "Give me the money for the lost one and I will buy me another one myself," he is not to be listened to (because he may not buy, and will neglect to take care of the other asses). Is this not self-evident? The case is even so when he has another ass. Lest one say he will not neglect to take care of the asses of the caravan, as his own ass is among them; he comes to teach us that the taking care of one is not equal to that of two.

The rabbis taught: If a ship upon the open sea, when it was necessary to decrease the weight, the weight of the loading must be counted (*i.e.*, to throw away the same weight of the loading of each passenger without any consideration of the value); however, the law of the ship must be observed. The owners of the ship (who are sailing together) may make a condition among themselves, that if one ship will be lost another shall be furnished. If there were wilful carelessness, however, or he departed himself and sailed on a place where the other ships usually did not go, the conditions are of no avail. "Is this not self-evident?" It means even when usually in the month of Nissan they go the distance of one cord, and in the month of Tishri *on* the distance of two cords, and the ships in question did go in Nissan, when they usually go in Tishri. Lest one say that this is not to be considered wilfulness, he comes to teach us that it is not so.

The rabbis taught: "A caravan that was attacked by robbers, and one of them succeeds in saving some goods from them, this must be divided among the passengers; if, however, he said to them, 'I will try to save for myself,' it is of avail." Let us see how was the case. If each of them could do the same, but he preceded them even if he has said, "I will save for myself," he must not do so. (It is not of avail because all of them have not renounced the hope of regaining it.) And, on the other hand, if it was impossible for them to save their goods, and the one succeeded nevertheless in saving some, why must he divide among the caravan? (They have already renounced their hope of regaining.) Said Rami bar Hama: "It means when they were partners, and in such a case a partner may separate himself against the will of his partner; therefore if he said, *I will do so*, he is separated; but not if he did it silently." R. Ashi, however, says: "The case was that they could save only with great trouble. If he did it silently, he must divide; but if he said, *I will take the trouble on myself*, it is of avail."

MISHNA *VI.*: If one has robbed a field and it was taken away from him by land robbers, when the land robbers were a plague of this country, the robber may say: The land is in the same place, and take it if you can; if, however, it was robbed because of the robbers, he must buy another field for him.

GEMARA: "*Because of the robber.*" How was the case? If it was taken only from him and not from others, this is already stated in the first part. "If it was a plague of the

country," etc. The case was that the government compelled him to show such land of which they could take possession, and he was going and showed it to them, it is considered as if it was robbed by himself. There was a man that in such a case showed to the contractor a heap of wheat belonging to the Exilarch, and when the case came before R. Na'hman, he made him pay for the same. At the same time R. Joseph was sitting behind R. Huna bar Hyya, and the latter behind R. Na'hman and questioned him: "If the decision was in accordance with the law, or is it only a fine?" And he answered: "This is in accordance with our Mishna, which states: *If because of the robbers*, etc., and it was explained that it means that he has showed," etc. When R. Na'hman went out, said R. Joseph to the above R. Huna: "What difference was it to you if it is law or fine?" And he answered: "If it is a law, then we will take the same for practice; and if a fine, we will not." R. Huna bar Jehudah happened to be in the house of Ebioni (the debate house of the apostate Jews), when after he came to tell Rabba of his misfortune, he asked him: "Do you feel some wrong action you have done?" And he said: "There was a case when one Israelite compelled by the heathen showed them the property of his neighbor and I made him responsible." And he said to him: "Go and fix your wrong act, as we have learned in the following Boraitha: An Israelite who was compelled by heathens and showed the property of his neighbor, he is not responsible, unless he took it with his own hands and gave it to the heathens." Said Rabba: "If, however, he showed it to them without having been compelled to this, it is to be considered as if he took it with his own hands." There was a man whom the heathens compelled, and he showed them the ass of R. Mary ben R. Pinchas ben R. Hisda. The heathens said to him, Take the ass and follow us, and he did so. Afterwards he was summoned before R. Ashi, and he acquitted him. Said the rabbis to R. Ashi: "Have we not learned in the above Boraitha: 'That when he took it with his hands he is responsible'?" And he answered: "The Boraitha means when he was not told to take it with his hand, but here he was compelled to do so by their command." R. Abuhu objected to R. Ashi from the following: "If a mighty man (of whom one is in fear) says to one, 'See that this branch of grapes or a bunch of grain shall reach me,' and he did so, he is responsible for it." And he answered: "It means that they were standing on either side of a stream."

[And it seems to be so, as the Boraitha states: See it shall reach me, and not Give it to me.] There were two men who had quarrelled about a net, each of them saying, "It belongs to me." One of them then took it and delivered it to an officer of the government. Said Abayi: "He may say, 'It was mine, and I could do with it what I pleased.'" Said Rabha to him: Must he then be trusted? he ought to be put under the ban until he gets it back, and then to leave it to the court to decide to whom it belongs. It happened that a man showed to the government the *μεταξα* of R. Aba. R. Abuhu, R. Hanina bar Papi, and R. Itz'hak of Naf'ha were discussing what should be done with him. R. Ilai, who was sitting among them, said to them: "So said Rabh, that he is responsible only when he himself took it and gave it to the government." They said to him: "Go to R. Simeon ben Elyakim and R. Elazar ben Pdoth, in whose courts cases of germon are tried." He did so, and they made the man responsible on the basis stated in our Mishna: "If because of the robber and it was explained when he showed it."

There was a man by whom a silver goblet was deposited, then when robbers attacked him he presented them with the goblet, and they left him alone. When the case came before Rabha, he made him free. Said Abayi to him: "Has not the man saved himself with the property of his neighbor?" Therefore said R. Ashi: "Such a case must be investigated. If he is a wealthy man, the robbers were coming to rob him because of his own wealth; and if he is not wealthy, they came only because of the deposited silver." It happened also with a man to whom the treasury for redeeming prisoners was deposited, and when robbers attacked him he presented it to them. When the case came before Rabha, he made him free; when Abayi remarked to him the same as he has remarked before to Rabha, Rabha answered: "There is not a greater redeeming of prisoners than this case itself. There was a man who led his ass to a boat before men came in; after it was crowded, it was too heavy and it was dangerous, lest the boat sink, and one of the passengers pushed the ass into the river, and it was drowned; after which Rabba made him also free." Abayi remarked to him as above, and he said: "It was only self-defence, then if not for the ass he himself would drown." This decision of Rabba is according to his theory elsewhere, that one who runs after a man to kill him, and on the way he breaks vessels, no difference if they belong to the

persecuted man or to others, he is free from payment, because he is guilty of a capital crime; and the persecuted one, if he breaks the vessels of the persecutor, is free, because the property of his persecutor must not be dearer to him than his own body. And if, however, they belong to others, he is responsible, as it is not allowed to save himself with the goods of his neighbor. But if one was going after the persecutor to save the persecuted man, and while running he breaks vessels, he is free no matter to whom they belong. This is not because the law is so, but if he should be responsible, no one would be willing to save a man from persecution.

MISHNA *VII.*: If a stream has overflowed the robbed field, he may say to him: "Yours is before you."

GEMARA: The rabbis taught: "One who robbed a field and it overflowed, must deliver up another. So is the decree of R. Elazar." The sages, however, maintain: "He may say to him: 'Yours is before you.'" What is the point of their difference? R. Elazar based his theory upon the exclusions and inclusions of the verse [Lev. v. 21]: "If he namely lie unto his neighbor," which includes everything. "That which was delivered to him to keep," it excludes other things; and further on [ibid., ibid.]: "Or any one thing about which he may have sworn falsely." It is again an inclusion of everything, and there is a rule that when the Scripture includes, excludes, and again includes, everything is included. The rabbis, however, do not consider this as inclusions and exclusions, but as a general and special. "If he namely lie" is general; "Which was trusted to him" is special; and "Or any one thing" is again general, and there is a rule that when there is a special between two generals, it must be judged similar to the special only; namely, as the special is a movable thing and it has a value in money, so all articles which are movable and have a value, excluding real estate, which is immovable, and bondsmen, who are compared to real estate, and also documents, although they are movable, they themselves have no value of money. But have we not learned in another Boraitha: "The very same is the case with the robbed cow, which was overflooded (which is a movable thing, and has a value of money)? He must furnish him with another cow, so is the decree of Elazar; the sages, however, say: He may say: 'Yours is before you.' In what is the point of their difference then?" Said R. Papa: "It means in a case where the robbed cow was lying on the robbed field,

and it was overflooded with the field, (and the robber did not yet acquire title) on the robbed cow." R. Eliezar is so in accord with his theory and the rabbis with their theory.

MISHNA *VIII.*: If one robbed, borrowed, or deposited an article when they were in an inhabited land, he must not return it when he is in a desert, unless he took it for the purpose of going into a desert.

GEMARA: There is a contradiction: "A loan is payable everywhere, a bailment and a lost article are not to be delivered only in their right places (hence a loan may be returned at any place?)." Said Abayi: "The quoted one means this: A loan may be demanded at any place, but a lost thing and deposit are to be demanded at the right places only."

"*For the purpose to go,*" etc. If so was the condition, is it not self-evident? The case is, if he said, let be this bailment with you as I go to the desert, and the bailee said to him, I also intend to go there, and if my wishes will be to return it to you there, I may do so.

MISHNA *IX.*: If one says, I have robbed you, or borrowed from you, or you have deposited with me, and I don't know if I have returned it to you, he must pay; however, if he says, I am in doubt whether I have robbed, etc., he is free.

GEMARA: It was taught: If the plaintiff claims a mana (100 zuz), and the defendant says, I don't know; R. Huna and R. Jehudah say, "He must pay," because certainty has preference to uncertainty. R. Na'hman and R. Johanan say, "He is free," because they hold that the money in possession of the defendant must be considered his until evidence is brought. An objection was raised from our Mishna, which states that if he says, "I am in doubt if you have borrowed it to me, he is free." Now let us see how was the case. If there is no plaintiff, then even the first part in the case, "I am certain I have borrowed, but doubtful if it was returned," must also speak when there is no plaintiff; why, then, must he pay? We must, therefore, say that the whole Mishna treats when there IS a plaintiff, and nevertheless in the second part it states he is free from payment. (And this is an objection to Huna and Jehudah.) Nay, the Mishna treats when there was no plaintiff, but the man likes to satisfy the heavenly will. (If he is certain that he has borrowed, it is the heavenly will he shall pay; but if he is in doubt whether he has borrowed, he is free at any rate.) It was taught also by R. Hyya bar Aba in the name of R. Jo-

hanan: "If one claims a mana and the defendant says, 'I don't know,' he is obliged to pay if he would satisfy the heavenly will."

MISHNA *X.*: If one steals a sheep from the flock and returns it, and it dies or it was stolen again, he is responsible; if, however, the owner did not know either of the theft or of its returning, and when they came to number the flock they found it right (and after it died or was stolen), he is free.

GEMARA: Rabh said: "If the theft was known, the returning must also be announced (and if he did not so, he is still responsible for it, even after the owner had numbered the flock), and the numbering makes him free only when he did not have any knowledge of the theft." Samuel, however, said: "The numbering makes him free at any rate." As he explains it, the last sentence of the Mishna applies to the whole of it. R. Johanan said: "If they have knowledge of the theft, the numbering after it was returned makes him free; but if they have not any knowledge of the theft, the numbering does not matter at all, as he is free even without it." And he explains that the last sentence of the Mishna applies only to the first part of it. R. Hisda, however, said: "Only when they have knowledge does the numbering make him free; but if not, he is responsible even after the numbering. And the statement of our Mishna holds good only when they had knowledge of the theft also, and Rabha explained the reason of R. Hisda's statement thus: The theft accustomed the sheep to separate themselves from the flock, and it may do so again; but if he has notified the owner, he will take care of them. Did Rabha, indeed, say so? Has he not said: "If one has seen that a thief had picked up sheep of the flock with the intention of stealing them, and he alarmed him and the thief threw them away, and the man was not certain if the sheep were returned, and the sheep then died or are stolen, he is responsible. Is it not to assume that the thief is responsible even when the owner has numbered them? Nay, it means when it was not numbered. But did Rabh say as it is stated above? Did he not state: 'If he has returned it to another flock, which the same owner has on another place, he is free (and there was neither knowledge nor numbering)'?" Said R. Hanan bar Aba: Rabh agrees when the sheep were speckled, and in such a case the owner knows that it was stolen in his absence, and the shepherd recognizes it by the speckle. Shall we assume that the following Tanaim differ in this case: "If one has stolen a sheep from the flock or a coin from the

pocket, he has to return it to the same place he took it from"? So is the decree of Ishmael. R. Aqiba, however, says: "It is necessary that the owner know the facts in the case." The schoolmen thought that usually a man knows the amount in his pocket, and he counts it whenever he takes a coin out, so he has knowledge of the theft; and R. Ishmael holds that the numbering makes him free, and R. Aqiba that the numbering does not make him free, unless he was notified of the returning. (Hence R. Ishmael and R. Aqiba differ in both, a sheep when it was not notified, in which Rabh and Samuel differ, and also in the case in which R. Johanan and R. Hisda differ.) Said R. Zebid in the name of Rabha: "If a bailee has stolen from the premises of the owner, all agree with R. Hisda; but here they speak of a case where the bailee has stolen it from his own premises." R. Aqiba holds that his function as a bailee has ceased (and he must notify the owner of the theft and returning). R. Ishmael, however, holds: "He is still a bailee, and when he returns it to the place he took it from his own knowledge suffices."

MISHNA *XI.*: One must not buy from the shepherds kids of goats, wool, or milk, and not from fruit watchmen wood and fruits. One may, however, buy from the women of Jehudah woollen garments (which usually were manufactured by them), and flax garments from those of Galilee, and also calves from the women of the city of Sharon. If, however, the sailors like to do it secretly, it is prohibited. Eggs and poultry are allowed to be bought at any place.

GEMARA: The rabbis taught: "One must not buy from the shepherds goats, kids, sheared or plucked off; garments of wool, however, are excluded, because it belongs to them; milk and cheese may be bought in deserts, but not in inhabited places. Four or five sheep or fleeces of wool together may be bought, but not two." R. Jehudah said: "Domestic sheep (which are brought home at night-time) may be bought, but not of deserts." This is the rule concerning buying of shepherds, an article which the owner of it perceives may be bought, but not articles which are not.

"*The Master says, 'Four or five sheep,'*" etc. If four may be bought, so much the more five? Said R. Hisda: "Four from a small flock and five from a large one." But is not this text contradicting itself? It states four or five, from which it is to be inferred but not three; and immediately it states but not

two, from which one may infer that three is allowed. This presents no difficulty. If the three are of the best sheep, they may; and if from the lean ones, they *may not be bought.* The schoolmen propounded a question: "R. Jehudah, who says that domestic ones," etc., made his condition of the first part; namely, that for the four or five in question, and he is more rigorous than the first Tana of the above Boraitha, or his condition is for the second negative part, which states but not two sheep, and he, R. Jehudah, comes to teach that only from outside, but domestic, even two may be bought, and he is lenient. Come and hear the following Boraitha: R. Jehudah said: "Domestic ones may be bought of them, but not others; in any place, however, four or five sheep together may be bought." Hence his decision was lenient.

"*And not from the fruits watchmen,*" etc. Rabha bought a bunch of branches from an *οὐρος* (a laborer who gets for his labor a part of the products). Said Abayi to him: "Did not our Mishna state 'Not from the fruit watchmen, wood or fruits.'" And he answered: "It means of a watchman who is hired for money, but of such who takes for his labor a part of the products, may be bought, as he usually sells his own part."

The rabbis taught: It may be bought from the fruit watchmen when they sell publicly and the scale is before them; if, however, they try to do it secretly, it is prohibited. It may be bought from them at the gate of the garden, but not at a place which is behind it.

It was taught: "When is allowed to buy from a robber?" Rabh holds: "When it is known that the greater part of the goods is his own." Samuel, however, maintains that even when the smaller part only is known to be his own. R. Jehudah's decision to Ada Daila was in accordance with Samuel's theory.

Property which belongs to a denouncer, R. Huna and R. Jehudah differ; one says, "It may be destroyed intentionally," and the other says, "It may not." The one who says, "It may," speaks thus because his money must not be dearer than his body. And the one who says, "It may not," speaks thus because, perhaps, he will have good children, and it is written [Job, xxvii. 17]: "He may prepare, but the righteous will clothe himself (therewith)." R. Hisda had an *οὐρος* who used to take exactly the half of the products for himself. Thereupon R. Hisda discharged him, and read with reference to himself the

verse [Prov. xiii. 22]: "But the wealth of the sinner is treasured up for the righteous."

R. Johanan said: One who robs his neighbor even the value of a *parutha* (half a cent) is considered as if he would take away his life; as it is written [Prov. i. 19]: "So is the path of every one that is greedy after (unlawful) gain; it takes away the life of those that own it." And also [Jeremiah, v. 17]: "And they shall consume thy harvest and thy bread; they shall consume thy sons and thy daughters." And also [Joel, iv. 19]. 'Because of the violence against the children of Judah." And also [II Samuel, xxi. 1]: "On account of Saul and on account of the house of blood, this because he has slain the Gibeonites." To what purpose is the second verse cited? One may say that it speaks only of his life, but not of the life of his children; hence the other verse. And still one may say that it treats only of a robber who does not pay for the robbery, but not if he does; hence the third verse, which treats of violence, which is even when he gives money. And, finally, one may say: It is only when he did it with his hands, but not when he was only a germon; hence the last verse, which reads, "Who has slain the Gibeonites"; and where is it to be found that Saul had slain them? We must say, therefore, that he was a germon because he had slain Nob the city of the priests, the supporters of the Gibeonites, who lost their lives by the death of their supporters. And the Scripture considers Saul as he himself had slain them.

"*But it may be bought from the women*," etc. The rabbis taught: "It may be bought from woman (the articles mentioned in the Mishna), but not wine, oil, or fine meal, and also not from slaves and not from minors." Aba Saul, however, said: "A woman may sell for four, five dinars for the purpose of buying a cap for herself." They all mentioned if they told the buyers to be careful about the bargain, then it is prohibited. Charity may be taken from them by the treasurers only a small quantity, but not a large one. From the women of the men who are engaged in the oil press may be bought a measure of olives or oil, but not small quantities. R. Simeon ben Gamaliel, however, said that in the upper Galilee even a small quantity may be bought (as this article is very dear there), and it may be the men are ashamed to sell small quantities in his house, and they give it to their wives to do so. Rabbina, who was a treasurer of charity, happened to be in the city of Mehuza, and the women gave him for charity golden chains and rings, and

he accepted. Said Rabba Tosphah to him: "Did not the Boraitha state that a large quantity must not be accepted from the women by the treasurers of charity?" And he answered: "For the Mezuzath this is considered a small quantity."

MISHNA *XII.*: Flocks of wool which came out by washing belong to the washman, but what came out by the carder belongs to the owner. If three threads only come out by the washing, the washman may keep it; if more, he must not; if, however, there were black threads in a whole piece, he may keep all of them for himself. The remaining threads of sewing, and stuff of the size of three fingers square, belong to the owner, not to the tailor. The splinters which fall off from the carpenter's bench with the plane belong to him, but what with the hatchet are the owner's; if, however, he labored at the owner's house, even of the plane belongs to the owner.

GEMARA: The rabbis taught: "One may buy flocks from the washman, because it is his. The washman may take the two upper threads for himself. By stretching the garment out for combing he can stitch the loops on the garment only by three stitches. One shall not comb the garment to its shoot, but to its warp, and he shall cut up the fringes to its length but not to its width; if by completing it he has to cut up in the width also, he may do so, the size of a span." *

The rabbis taught: "One shall not buy from the carder flocks, because they are not his property, unless in such places where it is customary that the carder keeps it for himself. A cushion, however, or a pillow filled with this stuff may be bought from him at any place." Why so? Because the change gives title to him.

The rabbis taught: "One must not buy from a weaver (who is laboring for others) all the stuff in connection with the weaving; he may, however, buy from him a garment even made of different colors (although it is to be presumed that the different colors were the remainder of threads given to him for garments, and did not previously belong to him, as the weaving it to a garment is considered a change and title is acquired). The same is the case with a dyer: one must not buy from him stuffs in connection with dyeing, but a whole dyed garment, for the reason stated before."

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* Here in the text comes a discussion, how many threads the laborer takes for himself, and then some Boraithas contradicting each other in this respect, questions which are not decided, and terms of laboring which cannot be understood now without the knowledge of the machinery of that time, and therefore we have omitted it.

The rabbis taught: "If a tanner takes skins to prepare them, the rubbish belongs to the owner; the wool, however, of the skins which was taken out from the water belongs to the tanner."

"*If they were black*," etc. Said R. Jehudah: "If such was taken off by the washman, it counts for the size which is needed for putting zithzoths in it; however, my son Itzchak is particular with it and cuts it up."

"*But not the tailor.*" How much, however, may the tailor keep for himself? Said R. Assi: The size of a needle's square.

"*The splinters which fall out by the carpenter*," etc. Is there not a contradiction from the following: "What the carpenter takes off with the hatchet and what is cut up with the saw belongs to the owner, but what falls off from the bore or plane or the splinter by the saw belongs to the carpenter"? Said Rabha: "There is no contradiction. At the place of our Tana there were two kinds of planes, a big one and a small one. The big one is called ἀξινη, and the small one is called plane. The Tana of the Boraitha, however, had knowledge of the big one only, and named it also plane."

"*If, however, he was working at the owner's house*," etc. The rabbis taught: The stone-cutters may keep the rubbish; branches, however, which fall off from the trees by fixing them, or of wineyards or other plants and herbs, if the owner is particular with them, it is considered a robbery when taken without permission, but not if they are not particular. Not any robbery applies to onycha and grass, unless the places where they are particular. So said R. Jehudah. Said Rabba: "The city of Sirian in Babylon is one of the places where they are particular with it."

END OF TRACT BABA KAMA.

TRACT BABA METZIA (MIDDLE GATE).

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SYNOPSIS OF SUBJECTS

OF

TRACT BABA METZIA (MIDDLE GATE).

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MISHNAS *I.* TO *IV.* A deposit stolen or lost, paid by the depository, of which thereafter the thief was found, to whom shall the double amount be paid? A gratuitous bailee, when he said, I have neglected my duty, etc. There was lost a deposited nose-jewel, and R. Na'hman made him pay by force. Finally the article was found, and was increased in value, etc. If an article was appraised for the sake of a creditor, and the latter appraised

it for his own creditor, may the returning take place or not? From what time may the creditor use the products of an appraised estate? If one has hired a cow and he loaned it to some one else. It can happen that the hirer has a right to require several cows from the owner of one cow. How so? A bailee who has transferred the bailment to another bailee, how is the law? The Halakha prevails, that a bailee who has transferred the bailment to another bailee of any kind is responsible. If doubtful money is to be collected or not (illustrated in Mishna III.)? Do you want to contradict a case of deposit with a case of robbery? A robber must be punished. If there was an uncertainty of both the plaintiff and the defendant, how is the law? If one deposits fruit at his neighbor's? If one becomes a prisoner, may his property be transferred to his nearest relatives or not? The difference between forsaken, abandoned, and a prisoner's properties. The estate of a prisoner must not be transferred to a minor relative, and not the estate of a minor to any relative. There was an old woman who had three daughters; together with one of them she was taken to prison, and of the remaining two one died and left a child. A brother of Mari b. Isk came to him and demanded a share of the inheritance, and he said, I do not know you, 81–97

MISHNAS *V.* TO *XI.* The quantity of usual losses one may count to deposited articles of grain and fruit? Losses of wine and oil depend upon the kind of barrels in which placed. If a barrel is deposited for safe-keeping, and the depository handled it, and it broke while yet under his hand. Peculiar is the stretching of hands which reads in regard to a bailee for hire, in connection from the same expression in the Scripture which reads in regard to a gratuitous bailee. If one has deposited money for safe-keeping, and the depository tied it and carried it on his shoulder, etc. Nothing is considered safety with money, unless it is hidden in the ground. It happened that one deposited money with his neighbor, and he gave it to his mother for safe-keeping, and it was stolen. Money deposited for safe-keeping with a money-changer. A depository who stretches his hand for the bailment. If one intends to use a bailment deposited in his control and says so, the liability follows immediately, ... 97–109

CHAPTER IV.

MISHNAS *I.* TO *V.* If one bought gold and silver coins together and made a drawing on the gold ones, title is also given to the silver ones, but not *vice versa.* Rabh borrowed dinars from the daughter of R. Hyya; thereafter the dinars increased in value. One holds that the law of exchange applies to a coin also, and another holds that it does not. If one were holding some coins in his hands and said: Sell me your articles for the money I have in my hand, and the other agrees. If one said: Sell me for this amount, title is acquired, and nevertheless the law of fraud applies. According to whom do we write in our legal papers, With an utensil which is fit to confirm with? Biblically, money paid gives title; why, then, was it said that drawing is needed? According to Abayi, he who retracts ought to be notified that he will be punished by Heaven, and according to Rabha he shall

be cursed. It happened that one gave money for poppy, meanwhile the poppy increased in price. Tabuth or Samuel b. Zutra was such kind of a man that he would not change his word, even if all the goods of the world were delivered to him, and he told: The above case of poppy happened to me. Cheating, which according to law makes the sale null and void, is in case where the sum of which he was cheated counts four silver dinars. Until what time the retraction may take place? The law of fraud applies to the buyer as well as to the seller, to a private as well as to a merchant. There is no cheating concerning a specialist who knows the value. If one is doing business with his neighbor in trust. (See foot-note, p. 127). How much less of the quantity of a sala should be effaced, that the law of fraud could not be claimed? The prescribed quantity for cheating is four silver dinars to each sala, ... 110–132

MISHNAS *VI.* TO *X.* There are five fifth parts which must be added to the principal amount. The things to which the law of cheating does not apply. Does the law of cheating apply to a hire? The laws of usury and cheating apply only to commoners, not to the sanctuary. A gratuitous bailee does not swear. If one bought wheat and sowed it in the field, how is the law? If there was fraud to more than a sixth of the value, how is the law? As cheating is prohibited in buying or selling, so it is in words. Cheating in words is more rigorous than cheating in money. To what thing do the western people pay more attention? One should always be careful with the honor of his wife. The noted legend of the oven of the Akhina. The law is not in the heavens. We do not care for a heavenly voice. Regarding cheating, there are three negative commandments. One must not mix together fruits from two separate fields. A merchant may buy grain from five barns, and place it in one storeroom. The embellishment of articles which are to be sold is forbidden, ... 132–144

TRACT BABA METZIA (MIDDLE GATE).

CHAPTER I.

RULES AND REGULATIONS REGARDING FOUND ARTICLES, DOCUMENTS, ANIMALS, AND IF ONE APPOINTS A MESSENGER TO PICK UP A FOUND ARTICLE.

MISHNA *I.*: Two persons, who hold a garment, and each of them claims that he has found it, or that the whole belongs to him, (in such a case) each of them shall take an oath that no less than a half belongs to him, and then its value shall be divided. If, however, one claims the whole and the other half of it, then the oath for the first must be for no less than three quarters, and for the second no less than a quarter, and it is to be divided accordingly. The same is the case with an animal, if both are riding; or, if one is riding and one leading, each of them must take an oath that no less than a half belongs to him, if both claim for the whole, and so they divide. If, however, there are witnesses, or they admit the fact, then it is to be divided without any oath.

GEMARA: Why is it stated: "Each of them claims he has found it, or the whole garment belongs to him"—is not one of them sufficient? R. Papa, according to others R. Shimi bar Ashi or Kadi, says: The first part speaks about a found article, and the last one about a transaction, and both cases are necessary. For when the case of a found only, only a found article should be stated, one may say that the rabbis ordered an oath, because it is only a found article, of which each of them may say: My neighbor would lose nothing even if I claim the whole and get half of it, which is not the case in a transaction (as the buyer paid for it, and if it would not be necessary for him he would not do so). On the other hand, if the last part only should be stated, one may say: "The rabbis have given an oath to both of them,

because each of them may say: As the same money my neighbor claims that he has given, I also have given, therefore I have a right to keep it for myself, and my neighbor shall go to the trouble to buy another, which is not the case with a found article, and therefore in the former case an oath would not be ordered." Hence both cases are necessary.

"Transaction!" Let us see from whom the money was taken. The case was, that both paid the money, one with the consent of the seller and the other against the seller's will, but the seller does not recollect to which of them he had given the consent (hence the order of the oaths).

Shall we assume that our Mishna is not in accord with Ben Nanas, who says: "An oath cannot be ordered to both, as one of them would surely swear falsely"? The Mishna can be explained even in accord with Ben Nanas, as he speaks of a case where one of them would surely swear falsely. Here, in case of a found article, it may happen that both of them has picked it up at the same time?

Shall we then assume that our Mishna is not in accord with Symmachus, who says: "That money which is doubtful is to be divided without an oath"? (See First Gate, page 3.) With whom, then, is the Mishna in accord? With the rabbis who are the opponents of Symmachus; do they not say that it is always incumbent on the plaintiff to bring evidence? What comparison is there? In the case where one of them is a plaintiff, and the other a defendant, the rabbis say that it is incumbent on the plaintiff to bring evidence. Here, however, when they both held a thing, they ordered an oath. But according to the theory of Symmachus, even in the case where there is a plaintiff and defendant, it is to be divided without an oath. Moreover, here, as both are holding it, it can be said that even Symmachus would agree with our Mishna, as the oath mentioned is rabbinical only, for R. Johanan says that the oath is an enactment of the sages to prevent one from going out and taking hold of his neighbor's property, claiming it as his.

At any rate, our Mishna is not in accord with R. Jose, who says (Chapter III., Mishna 106): "If so is the case, what can the defrauder lose? therefore, the whole amount must be deposited until there will be evidence." Let us then see if our Mishna can be explained in accord with the rabbis, the opponents of R. Jose, who say that the part in doubt should be deposited "until Elijah will come." Is not the case in our Mishna similar

to the case there, as both claims are doubtful? What comparison is it?

It does not belong to both parties, but to one of them; the rabbis ordered it should be deposited "until Elijah will come." Here, however, there is a possibility that the article belongs to both parties, so they ordered an oath; but R. Jose maintained that even where it is certain that both parties have a share in the money in question, he nevertheless decided that the money should be deposited "until Elijah will come." Moreover, here, it is probable that the article belongs to one party. (Therefore our Mishna is in accord with the rabbis and not with R. Jose.)

According to both the rabbis and R. Jose, how should the following Mishna be understood: "A storekeeper upon his credit-book (if it is found that he has given something by the order of the employer to his working-men, and they deny having received anything), both take an oath, and collect the money from the employer"? Now, one of them has surely sworn falsely; why should it not be here the same also, that the money should be collected from the employer and deposited "until Eijah will come," as one of them is surely a defrauder? It can be said there is another reason. The storekeeper may say to the employer: I have followed your order, and I have nothing to do with your working-men, whom I would not believe even with an oath, and it was your fault that you did not order me to give the goods only in the presence of witnesses or to take a receipt from him. The working-man can say to the employer: You must pay me for my work, and I have nothing to do with your storekeeper, whom I would not believe even with an oath; and therefore both collect the money from the employer after they have sworn.

R. Hyya taught: If the plaintiff says that the defendant owes him a hundred zuz and the defendant denies owing him anything, and witnesses, however, testify that they only know that he owes him fifty, he must give him fifty, and take an oath for the remainder. The reason is that the admission of the defendant himself shall not be stronger than the testimony of witnesses,* and this I have concluded by drawing an *a fortiori* conclusion, and also our Mishna supports me by its statement: "When two are holding a garment," etc. We are the witnesses

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* The law is that if one denies all, there must be no oath, biblically; but if there is an admission in part, a biblical oath must be taken for the remainder. If, however, there are witnesses, although he denies, he must pay the full amount.

that each of them holds what he claims to be his, without any admission by his opponent, and, nevertheless, it is stated that each of them must take an oath.

Why was it necessary to draw an *a fortiori* conclusion for the above statement? Lest one say that a biblical oath is given only when there is an admission in part from the defendant, and the reason is, as Rabba declared elsewhere: "Why do the Scriptures decide that one who admits to a part of the claim must take an oath? Because usually one is not so bold as to deny the whole in the face of his creditor, and therefore he admits partly, even had he intended to do so before his creditor appeared, and therefore he only denies a part of it; and it may be that even their denial is only to gain time for the investigation, thinking that in the meantime he will get cash, and will pay the whole claim; and, therefore, the Scripture prescribes an oath in such a case, which is to be believed, that a man with such intention will refuse to swear falsely, and would rather admit the debt of the whole amount. But in case he denies, and witnesses testify against him, in which case the intention above cannot be supposed? No oath is prescribed, he must pay according to the testimony of the witnesses, and shall be acquitted. Therefore it was necessary for him (R. Hyya) to deduce it, by drawing an *a fortiori* conclusion, as follows:

The admission from his own mouth, which does not cause fine, nevertheless causes an oath; witnesses who cause fine, so much the more they should cause an oath.*

Let us see, then, what R. Hyya means in saying that he has support from our Mishna? How can the case in the Mishna be compared to his case? In the case of R. Hyya the creditor had witnesses, and the borrower had none at all; then if he would have witnesses who would testify that he owes him nothing, R. Hyya certainly would not order an oath. But in our Mishna, as *we* are witnesses for one party, we are also witnesses for the other party, and nevertheless an oath is ordered. (Consequently the Mishna orders an oath, not because of admission in part, in which case a biblical oath would be necessary, but only a rabbinical oath as stated above.) Therefore, if it was taught that R. Hyya had said he had a support from our Mishna, it was said in regard to

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* The text here is very complicated, and Rashi and Tosphat with great difficulty interpret it differently. It seems to us, however, that our explanation is the exact sense of the text.

another statement of his as follows: "If the plaintiff claims a hundred and the defendant says only fifty, and here they are, he is, however, obliged to take an oath upon the remainder. Why so? Because "here they are" is considered an admission in part; that is, although "here they are" *means that "your claim is now settled*, and I owe you nothing," it is nevertheless considered an admission in part. And the support of the Mishna is this: As they both hold the garment, *we* are witnesses that each of them says, "Take what you hold, and the remainder is mine," and this is equal to the claim "here they are," and nevertheless an oath is ordered.

R. Shesheth, however, says: "When he says, 'here they are,' there is no oath. Why? Because 'here they are' is considered as if the money is already in the hands of the plaintiff. Consequently the claim for the other fifty is denied entirely without any admission." But according to R. Shesheth the decision of our Mishna would be embarrassing to him. He may say that the oath in our Mishna is only an enactment of the sages.

But does not R. Hyya also agree that so it is? Yea, but if "here they are" is equal as an admission in part, and the oath is ordered biblically, the rabbis have the right to order an oath similar to the biblical one. According to R. Shesheth's theory, however, that in such a case no biblical oath should be ordered at all, how could the rabbis arrange an oath which has no analogy in the Scripture?

An objection was raised from the following Boraitha: If there was a note for Sellahs or Dinars without number, the lender claims five and the borrower says three, there must be an oath, because the third one by the borrower is an admission in part. As he could say that the plurality in the note means only two, so is the decree of R. Simeon Elazar. R. Aqiba, however, says: "The admission of the third one is to be considered as if he had returned a lost thing, and he is acquitted. Now, how the case would be if he would say only two (which would not be denied after the note is recognized), an oath would be ordered, even according to R. Aqiba's theory. Is not the note (which can be collected from his real estate) considered as "here they are," and, nevertheless, an oath would be necessary? Infer then from this that such is the law with all claims which are defended with "here they are."

Nay, it can be said that even when he admits only two, there is no oath, and the expression "three" is mentioned only to

deny the theory of R. Simeon, who takes three for an admission in part, for which the law prescribes an oath. And so also seems to be common sense that, according to R. Aqiba, even if he would say only two, he is free from an oath. Then if not so, how can he make him free, when he admits three? It could be a trick on his part to admit three and to be free from any obligation, as he would know that when, if he should claim only two, an oath would be given to him. Infer from this, that so it is. But if it is so, then it contradicts R. Hyya, who says that "here they are" does not prevent an oath. Nay, here in our case of the note, "here they are" is not the reason, but because the note is a support to his assertion, or it can be explained the note implies a mortgage on real estate, and there is no oath in a case where real estate is claimed.

Come and hear (another objection): We learned that the father of R. Aputriki had taught in the first case of R. Hyya just the reverse of R. Hyya, viz.: "If one claims a hundred, and the other denies all, and there are witnesses for fifty, lest one say there should be given an oath, because the testimony of the witnesses should be considered as an admission in part; therefore it is written [Ex. xxii. 8]: 'For any manner of lost things, of which he can say, *this it is*,' which means the liability is only when he admits with his own mouth, but not by the testimony of witnesses." (Hence it contradicts R. Hyya.) How can you contradict R. Hyya with a Boraitha? R. Hyya is a Tana, who is authorized to differ with it. But is not the Boraitha supported by a verse of Scripture? R. Hyya may say that the verse in question is needed for the law of an admission in part. And the Tana of the above Boraitha may say that "*this it is*" has one word which is superfluous. We therefore deduce from both of them, viz.: that to an admission in part an oath is necessary, and that no oath is given when witnesses testify.

There was a shepherd to whom cattle was given always in the presence of witnesses. It happened, however, one day, that it was given to him without witnesses, and he denied, and witnesses testified that he had eaten two of them. Said R. Zera: "If it is to agree with the first case of R. Hyya, he must take an oath for the others." Said Abayi to him: "Even should we agree, could then an oath be given to him? Is he not a robber (to whom an oath is not given)?" Rejoined R. Zera: "I mean to say, that an oath should be given to the plaintiff that he had delivered to him such, and he may collect the money."

But even if we do not agree with R. Hyya's decision, we should nevertheless give him a rabbinical oath, according to R. Na'hman's enactment concerning the following Mishna: "When one claims hundred and the other denies, he is free." Said R. Na'hman: "He is free from a biblical oath, but he must take a rabbinical oath?" Nay, that an oath which cannot be given to the defendant the plaintiff shall swear, etc., is also only an enactment of the sages, and an enactment to an enactment cannot be made.

"Why," said Abaye, "he is a robber? Even if a shepherd only, an oath could not be given to him according to R. Jehudah, who says: 'A shepherd who is not known to be trustworthy, is unfit as a witness?'" This presents no difficulty. If the shepherd keeps his own cattle, he is not fit for an oath; but if he keeps the cattle of others, he is fit; because if it would not be so, how could we confide the cattle to a shepherd? Is it not written [Lev. xix. 14]: "Nor put a stumblingblock before the blind." But we go with the rule: A man will not sin for others' benefit.

"*Each of them swears*," etc. What shall the oath contain? The part that he claims to have in it, and he swears that he has half of it, or he swears that he has not *less* than a half in it? (The difference between the two expressions is this. In case he swears to an affirmative statement, if he has not, he has sworn falsely. When, however, he swears to the negative statement, the oath is not false, even if he has nothing, as he only swears that he has *not* in it *less* than so and so, and in case he has nothing in it, he has not sworn falsely. The expression in the Mishna, however, is in the negative, and therefore the question.) Said R. Huna: "He swears both. 'I have some claim in it, and not less than a half.'" But why not in an affirmative manner: "I swear that I a half belongs to me"? Then he would contradict his claim that the whole garment belongs to him. And even in the negative manner, does he not contradict his claim? If he says: "According to my knowledge, the whole is mine, but at all events I swear that at least no less than a half belongs to me. But, after all, as they both hold the garment and the oath is ordered to both equally, why the oath at all? Let them divide without an oath?" Said R. Johanan: "This oath is not biblically at all, it is only an enactment of the sages, for the purpose that one shall not take possession of his neighbor's property, claiming that it is his, or he has a share in it; therefore the oath. But if he is suspected in the case of money, why should he be trusted in an oath?"

Nay, the "theory of because" (because he is suspected in the case of money, should he be also suspected in an oath?) we do not act upon. And a support to it we can find in the Scripture, which ordered an oath in an admission in part; and if it would be customary that whoever is suspected in a case of money, should be also suspected of swearing falsely, why then the oath? This above support, however, can be dismissed thus: In the case of an admission in part, there is no suspicion at all. The defendant merely had not the whole amount in cash, but only a part of it, and he taught: I will admit now only the part I have in cash, and the remainder I will give afterwards. And it is as Rabba stated before, p. 238. This can also be proved from the statement of R. Idi bar Abin in the name of Hisda: "One who denies falsely a money loan is nevertheless qualified to be a witness, but whoever denies a deposit (which was given to him only to take care of, and he falsely denies it) is disqualified to be a witness." But why shall we not say if he denies a deposit, that merely he could not find it then, and therefore he denies it, intending, however, to return it when it will be found? He is disqualified only in the case where there are witnesses that the deposit was in his house when he denied it, and he had knowledge of it, or the witnesses testified that he was holding it in his hand. But did not R. Shesheth say: "For the following three things: (a) That I have not neglected it, (b) I have not made use of it, and (c) I am positive it is not under my control, the oath was given"? (This is the case of a gratuitous bailee, who is not liable when it is stolen.) Now, why then should he be trusted with the oath? Let "the theory of because" he is suspected in a case of money, he should also be suspected in an oath, also be applied here. Say, then, that such a theory we do not practise. Abayi, however, says that the reason for the statement in our Mishna, to make them both swear, is not as R. Johanan explains, because in such a case an oath would not be trusted to him, but we suppose that his claim is because he has an old loan of money, which is forgotten by the other, and therefore he takes possession of the garment claiming it is his, because in reality all personal property is a security for the loan. If it is so, let them take the garment without an oath? We are not supposing a certain loan, but that he is in doubt about it. But when he is doubtful, and he nevertheless takes possession of his neighbor's property, let him be suspected, that he will also swear in such a case? Said R. Shesheth, the son of R. Idi: Usually men restrain themselves

from taking an oath on a doubtful thing, although they are not averse to taking possession of property doubtfully, because money can be returned, which is not the case with an oath.

R. Sera propounded a question: "When one of the two holders overcame the other and took it away, what is the law?" Let us see how was the case? If the other party keeps silence, then he admits; and if he objects, what more could he do, when his opponent is stronger than he? The case was, that previously he was silent, and afterwards he objected, and the question is: Shall we assume that because he was silent he has admitted, or perhaps the reason he kept silent previously was because it was done in the presence of the rabbis, who could testify in the case? Said R. Na'hman: Come and hear (in addition to our Mishna, there is a Boraitha, as follows): "All this is said only when both are holding the garment; but if only one holds it, and the other claims the ownership of it, the rule that the plaintiff is to bring evidence applies here also." Now, let us see; if one would claim ownership of personal property which is in the possession of another, the statement of the Boraitha would be entirely superfluous, as it is self-evident. We must say, then, that the case was as R. Zera stated it. Nay; this can be explained as follows: They appear before the court when one took possession of the whole garment, and the other put only his hand upon a small piece of it. In such a case an oath is necessary, even according to the theory of Symmachus, who says that doubtful money is to be divided without an oath; he would agree, however, in this case, because the laying of one's hand upon a piece of it counts for nothing.

If the law were that of one overcome, and took possession in the presence of the court, and the court decided that it should be taken away from him, and in the meantime he had consecrated it, there is no question but that such an act at that time cannot be considered. But if the court would decide to leave it in his possession, should he have overcome the other, and he as yet not taking possession of it, consecrated it, what is the law? Shall we say, because the master says elsewhere: "The consecration by word of mouth only is equivalent to delivering to a common person," in our case shall his mere word of mouth be considered as equivalent to his overcoming and taking it away (and then the thing is certainly consecrated), or perhaps it is not so, because it is not yet in his possession, and it is written [Lev. xxiv. 14]: "And if a man sanctify *his* house," of which it is to be inferred that, as his house is under his control, so he can consecrate it, so

everything which is under his control, but not otherwise, can be consecrated, and in our case it is not yet under his control? Come and hear: There was a bath-house about which two parties quarrelled, each of them claiming it was his property. Then one of them arose and consecrated it. And R. Hanania and R. Aushia and other rabbis did not use this bath any more. And R. Aushia said to Rabba: "When you go to see R. Hisda in Kopri, question him about this case." When Rabba went to Kopri, he passed by Sura, and he questioned R. Hamnuna, and the latter answered him thus: It is decided in a Mishna [Thaharoth, Chap. IV., 12], which states: "If there is a doubt about a first-born, be it of a human being or of an animal, clean ones (which are allowed to be eaten) or unclean ones, the rule that the plaintiff must bring evidence is applied to it." And a Boraitha, in an addition to this Mishna, states: "They are nevertheless prohibited from shearing their wool and to use them for labor." Now, it is certain that if the priest took it away, the court would not compel him to return it, because then he would be the defendant, and the other party must bring evidence. And still, even when the priest did not yet take it away, it is said that it must not be used for labor, as stated above. (Hence we see that even when it is doubtful, it is nevertheless consecrated.) Rejoined Rabba: "You compare this with the consecration of a first-born! There is a difference, as its consecration comes by itself without being consecrated by a human being, and therefore it must be used for labor, no matter under whose control it is."

But what is the law in the above case of the bath-house, after all? Come and hear: R. Hyya bar Abin said: "A similar case happened to R. Hisda, and he questioned R. Huna, and his decision was based upon R. Na'hman's following decision: That such property which must be replevined by the court, even if it is consecrated by one of the parties, it is not holy." But how is it if it could be replevined? The consecration would be valid, although he did not as yet take possession thereof. Did not R. Johanan say: "If one has robbed a thing, and the owner has not yet resigned the hope to regaining it, it cannot be consecrated by one of them? (See First Gate, page 155.) Do you think the bath-house in question was a movable property, to which the rule that the plaintiff must bring evidence applies? This was a real estate, that, if he can replevin it by the decision of the court, it is considered as if it were already under his control."

R. Thalifa of Palestine taught in the presence of R. Abbahu:

"If two appear before the court, both holding one garment, each of them gets the part he holds in his hand, and the remainder they divide equally." Remonstrated R. Abbahu: But not without an oath. (Asked the Gemara): If it is so, how is our Mishna to be explained, which states: It shall be divided, and it does not state that, 'only the part that he holds in his hand.' How is the case to be explained? Said R. Papa: When both hold only the χερχοξ (the fringes). Said R. Mesharshias: "Infer from this that a *sudarium*, which usually the buyer must take in his hand when he wishes to consummate his agreement,* is enough when he takes in his hand the size of three fingers square, as this piece which he holds is considered as if cut off, and the expression [Ruth, iv. 7], "and gave it to the other," is applied.

Rabha said: "The case in our Mishna, even when the garment was covered with gold (on some places), it is nevertheless to be divided. Is this not self-evident? Rabha means to say that the gold cover was placed in the centre of the garment. But even this is self-evident? The case was that the gold covering was nearer to the hand of one of the parties. Lest one say, that the garment shall be divided so that the gold shall remain his share, he comes to teach us that the other party has the right to demand that the gold shall also be divided.

The rabbis taught: When two hold a note (the lender and the borrower), the lender claims: "The note is not yet paid, but I dropped it, and it was found by the borrower"; and the borrower says: "The note is paid, and it is mine now"; the note is still in force, if the signature is certified to by the court. So is the decree of Rabbi. R. Simeon ben Gamaliel, however, says: "The value of it must be divided." If, however, the note falls into the hands of the judge, nobody can compel him to give it away. R. Jose, however, says: "Even then the note is in full force."

The master says: "It is in force if the signature," etc. And what is then—does the lender collect the whole amount? which contradicts the statement of our Mishna. Said Rabba in the name of R. Na'hman: "If the note is approved by the court, all of them (the Tanaim who are named in the above Boraitha) agree

* In ancient times, and even now in our day in those places where the Jews use their own law, all transactions and even marriage contracts are conclusive only when the buyer or the husband takes in his hand a garment which belongs to the other party to the agreement. This is called *Kabboloth Kinyan*, which means the taking possession of what he has bought. And this is based upon the Scripture [Ruth, iv. 7].

that the value of it must be divided (because it is considered as money or a garment, the law of which is stated in our Mishna). They differ, however, when the note is not approved by the court. "Rabbi holds that even when the borrower admits that it is his note, it must be nevertheless approved by the court." If they do so, the value is divided; but if they do not, it is not to be divided. Why so? Because the note would not have any value whatever. Who then makes it a valid note? The borrower, by the admission of his signature, but in the same time he claims that the note is paid. R. Simeon ben Gamaliel, however, is of the opinion that when the signature is admitted, it need not be approved by the court, and therefore it has a positive value, which must be divided. The text above says: "If it falls in the hands of the judge," etc. Why? Is the judge not a human being as any other? Said Rabha: "It means thus: If a stranger has found a note, on which the certification of the court is to be seen, much less when there is no certification by the court, neither of the parties mentioned in the note can make use of it. (Therefore it must not be returned to any of them), for fear that either it was written by the borrower, and he has not received any money as yet, or (if it was certified to by the court) perhaps it was paid. But R. Jose holds that, so long as it is not marked that the note is paid, it is in force, and there is no fear that it is a paid note."

R. Elazar said: "R. Simeon ben Gamaliel and Rabbi differ when both parties hold the text of the note, or both hold the signatures of the witnesses or court; but when one holds the text and the other the signatures, each of them may keep what he holds." R. Johanan, however, said: "It makes no difference what they hold, it must always be divided." But is it not stated: "Each takes what he holds"? The case was, when the certification of the court or signatures to the note were in the centre of it. If it is so, what is there new in that he comes to tell us? The case was, that the signatures were nearer to one than to the other. (This is to be explained, as in the above case, when covered with gold.) Said R. Aha of Diftha to Rabbina: "According to R. Elazar, who says that one takes the text and one the signatures, for what purpose do the parties need it, to use it as a cover for a utensil?" Rejoined Rabbina: "It means its value, namely: The difference in value is to be appraised between the text and the signatures; and the explanation is thus: A note which is certified to by the court, and the date is stated, has more value, as such can be collected even from property that was mortgaged

after the date of certification, which is not the case with a note in which the date of certification is not stated. In this case the one who holds the certification gets the amount, which is as mortgaged after the date of certification. And also the case in which it must be divided, also means its value; because if not so, how would you explain the case in our Mishna, where the garment is to be divided? Should it be cut in pieces and damaged? Surely not, but it means the value of it should be divided, and the same is the case here." *

Rami bar Hama said: "From the decision of our Mishna (that when both claim to have found a garment, which means that both picked it up, both are entitled to it, and it is to be divided), it is to be inferred that if one sees an article upon the ground, and tells his companion to pick it up for him, the latter acquires the title. For if it could be borne in mind that it is not so, the case of our Mishna when both picked it up, for the purpose that they should get title to it, each half that belongs to one of them was also picked up by the other, and consequently both should not get title to it, and it should still be considered as it is still upon the ground, so that any other may take it out of their hands, and acquire title for himself. Infer from this, that so it is." Rabha, however, says: "This is no support at all. It may be said that one cannot get title to a found thing through another, even when the other does not intend to keep it for himself. The case in the Mishna, however, is different, because each of them intends to get title to it, and in the same time, when he gets title for himself, he acquires title to the other half for his companion. And a support to it is to be found in the following: If one commands his messenger he shall steal something, and he did so, the sender is free; but if they were partners and had stolen something together, both are liable. And why? Is it not because at the same time that he bears the guilt for himself, he bears it also for his neighbor?" Infer from this, that so it is.

The same said again: Now that we are coming to the conclusion that we can use "the theory of because," if a deaf and

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* The text of this page is so complicated that it is difficult to explain its exact meaning, for we cannot understand the meaning of Rabbina's explanation, and also the difference between holding the text of a note, or the certification of the same, as the court certifies only that the text is legal. We could not find any one of the commentators who was able to interpret this clearly. Still, according to our method, we could not omit it, and, therefore, we have translated it almost literally.

healthy man picked up a found article together, neither of them gets title to it, because, as the deaf man cannot get title for himself, the healthy one cannot get title to it. And lest one say, why should the healthy one be considered worse off than if he too were deaf, for in such a case when both are deaf, both get title to it? The reason is, that in such a case it is only an enactment of the sages, that they shall not come to blows; but here, when the healthy one does not acquire title, the deaf one will say: "If the healthy one does not get title of it, how should I get title to it?"

"*If two are riding.*" R. Joseph said: R. Jehudah told me as follows: "I have heard from Mar Samuel two things, in the case when one is riding and the other is leading. In one case he decided that he acquires title to it and in the other that he does not, and I cannot recollect in which case it is and in which not." Let us see what was the case! Shall we assume that if one was riding on a found animal and somebody came and took it away from him, and in the same way was the case with the leader, that one was leading a found animal and somebody took it away from him, is it possible that Samuel could declare in the latter case that the leader did not get title to it? (The law is that leading gives title.) Consequently if Samuel declared in one case that he had not, it is riding only.) And R. Jehudah would not doubt it.) When, however, he was in doubt, it must be the following case, when one was a-riding, and the other was the leader of the same animal, and in this case Samuel declared that one had acquired title to it and the other not; and his doubt was if the rider had the preference because he held the animal, or the leader because the animal was going by his leading? Said R. Joseph again: "R. Jehudah told me, let us find out the meaning of Samuel from the following Mishna: If one was sitting in a wagon of Kelaim and another was leading it, each of them gets the forty stripes. R. Meir, however, sets free the sitting one" [Kelaim, VIII., 4]. Samuel, however, changed the names and declared that the sages made him free, and this was because so the Halakha prevails.

Infer from this that, riding, one does not acquire title even when there is no leader, and much less when *there* is another one who leads it. Said Abayi to R. Joseph: "How can the master decide the case of riding from the case of sitting? The riding one holds the bridle, which is not the case with the sitting one." And he answered: "So taught Idi: A bridle does not give any title."

It was taught, also, by R. Helbou in the name of R. Huna, that a bridle gives title only when it is given hand to hand; a found animal, however, or if it was from the inheritance of a proselyte who dies without heirs, it does not. For what purpose is the bridle termed *Mussira?* * Said Rabha: "Idi explained to me that this expression was used because it contains in it delivery." And, therefore, if his neighbor delivers to him the bridle of the animal, he has bought it, and he acquires title. Of a found animal or of the inheritance stated above, in which there is no one who can deliver it to him, title cannot be acquired.

An objection was raised from our Mishna. "When two were riding upon an animal," etc., according to whom would be this statement? Certainly not according to R. Meir, who declared that even sitting gives title, so much the more riding. It must be, therefore, that it is according to the rabbis, from which it is to be inferred that riding gives title. Nay, the Mishna may treat of a case when the riding one leads the animal by striking her with his feet. But if it is so, he is the leader? Yea, there are two kinds of leaders. Lest one say, that the riding one has the preference, because he does both, holds and leads it, the Mishna therefore comes to teach us that both are equal.

(Another objection was raised.) Come and hear: "Two who were pulling a camel or leading an ass, or one of them was pulling and the other leading, by such an act the title is recognized." R. Jehudah, however, says: "Title is not recognized unless one is pulling a camel or leading an ass." We see, then, that the Boraitha states "pulling and leading" only, but not riding. The same is the case in riding, and when it states pulling and leading, it is only to deny the theory of R. Jehudah, who says that the title to a camel is acquired by pulling and an ass by leading, and it teaches that title is acquired even in the reverse. But if it is so, let the Boraitha teach both when two were pulling or leading either a camel or an ass? There is one who does not acquire title. Some say that pulling an ass and others say leading a camel. According to others, the objection was raised from the latter part: "By such an act," etc. Does not this expression mean to exclude riding? Nay, it means to exclude when the reverse was done. If so, it is only a repetition of R. Jehudah: "There is a difference between them, that with both mentioned animals

* "Mossar" in Hebrew means "deliver."

one of the two things in question does not give title; some say pulling an ass and others say leading a camel."

Come and hear: "If one was riding upon a found ass and another was holding the bridle, the former has acquired title of the ass, and the other one of the bridle. Hence we see that riding does give title? Here is also the case, when he leads it with the feet. If it is so, why does he not acquire title to the bridle also? Read: The riding one acquired title to the ass and half of the bridle, and the other to the other half of the bridle. This would be correct if the riding one does acquire title to the bridle by picking it up through an agent intentionally; but the one who was only holding it, why should he have any right? Read, then: The one has acquired title to the ass and the whole bridle, and the other only to the piece which he holds in his hand. What answer is this? Even if you would say that when an agent picks up a found article for his principal, the principal acquires title, this is only in the case when the agent was willing to do so; but here the holder of the bridle picked it up with the intention to keep it for himself, and when you say that he has not any right for himself, how should he acquire title for the other? Said R. Ashi: "The riding one has a right to the ass and the part of the bridle which is upon the head of the ass, and the holder of it the piece which he holds in his hand, and the remainder does not belong to either of them." Come and hear (again): R. Eliezer says that riding gives title in the field and leading in the city. (Hence we see that riding gives title?) Here is also meant when he leads it with the feet; then it is leading? There are two kinds of leading, as explained above. But if it is so, why does not riding give title even in the city? Said R. Kahna: "Because it is not customary for men to ride in the city." Said R. Ashi to him: "According to your theory, if one picked up a Persian coin on Sabbath, which is not the custom with Iraelites on Sabbath, should he also not acquire title to it? You also admit that such an act is good enough to give title. The same should be the case with riding in the city?" Therefore we must say that R. Eliezer speaks not of a found article, but of a regular sale, at which the buyer was told: "Go and acquire title in it, as it is customary." If it was a public ground where men are usually riding, title is acquired; and if he was a respectable man who used to ride even in the city, the title is acquired. The same is the case when it was a woman. And (on the contrary, if he was a commoner, who is not ashamed to ride anywhere,) title is acquired. (And the title is not ac-

quired only by such people who are accustomed to riding in the city.)

R. Elazar questioned: "If one says to a person: Pull this animal and acquire title on the utensils which have been placed upon it, what is the law? Does the pulling of the cattle suffice to give title on the utensils or not?" Said Rabha: "Even if he should say to him, acquire title on both things in question, would it be sufficient for the utensils also? Is not the animal considered as a movable court, which does not give title in the utensils placed on it? And lest one say it means when the animal stops, is there not a rule that when the title is not acquired by moving, it does not even when it was standing or sitting?" The Halakha, however, prevails, that when the animal was tied. Said R. Papa and R. Huna the son of R. Joshuah to Rabha: "According to your theory, if one was going in a boat and fish fell into the boat, would we also consider the boat as a moving court, that title in the fish would not be acquired?" And he answered: "The boat is resting, but the water is moving and bears it along."

MISHNA *II.*: If one rides on an animal and sees an article on the road, and says to his neighbor, Bring it to me, and the latter picks it up and says, I myself have acquired title to it, he has done right. If, however, after delivering it he says: I have acquired title to it first, his claim is not to be considered.

GEMARA: We have learned a Mishna [Peah, IV., 9]: If one has gathered the corner tithe, saying, I take it for a poor so and so, R. Eliezer says that the poor ones get title to it. The sages, however, say that he may give it to the first poor man he may meet. Said Ula in the name of R. Joshua b. Levy: "They differ only when the one who took it was not poor. R. Eliezer holds, that because he can renounce his ownership of all he possesses so that he himself would be poor, would be then entitled to it, the same is the case even if he had not done so. And "because" he himself is entitled to it, he may do so for any one else. The rabbis, however, hold, that the "theory of because" can be applied only *once*. In this case, however, "Because" is used twice, therefore their decision. If, however, the man in question was poor himself, all agree that he can take it for another poor man, as here only one "because" is to be used; namely, because he has a right to acquire it for himself, he may do the same for another. Said R. Na'hman to Ula: "Let the master say, that even if they were both poor, they still differ. As regarding a found article, all are considered as poor, and nevertheless our

Mishna stated that if the one who picked it up said: I myself have acquired title to it, his act is correct. Now if in the quoted Mishna they differ, in that one poor for another, our Mishna would be in accord with the rabbis." (That is, in the first part, "because" the one who picked it up was entitled to it for himself, he has also a right to transfer it to another although he was directed by the rider; and the latter part teaches us that, when he has not acquired title to it before he has given it to the rider, we do not apply the above "theory of because," if he want it for himself.) But if you will say that the recited Mishna speaks only of a rich for a poor, but when both were poor all agree that the title is acquired for the other, then our Mishna is neither in accord with the rabbis nor with R. Eliezer? And he answered: "The Mishna treats of a case when the man who picked it up says to the rider: Although you have seen it first, nevertheless by picking it up I intended to acquire it for myself." And it seems that this explanation is correct from the latter part, which states: "If he says I have acquired title on it first," etc., which is superfluous, as it is self-evident that he means at the time when he picked it up, which certainly he was the first, even if he would not assert it so plainly. Therefore, we must say that it comes to teach us that even in the first part his claim was that he acquired title *first*. R. Na'hman, however, may say that the expression "first," mentioned in the latter part, was with design to show that in the first part this word was not used.

R. Na'hman and R. Hisda both said: "If one picks up an article for another, the latter does not acquire title. Why so? Because this would be similar to one who takes possession, without any order, of goods or money of his neighbor for the purpose of settling his account with so and so, although the same is a debtor to other persons, which is certainly unlawful, and his act cannot be taken into consideration." Rabha objected to R. Na'hman's statement from the following: A thing found by an employee who was hired by the day, belongs to himself. When is this the case? When the employer has hired him to clean or plough the field; but if he was hired for any kind of work for the day, the found article belongs to the employer. (Hence we see that one can acquire title for another.) Said R. Na'hman: In the case of an employee is different, for his hand is considered as the hand of his employer for the whole day. But did not Rabh say that an employee can retire from his agreement in the middle of the day though he was hired for the whole day? And R.

Na'hman rejoined: "Yea, but so long as he has not retired, his hand is considered as the employer's hand." And the reason why an employee may retire from his agreement, even in the middle of the day, is because it is written: "For unto me are the children of Israel servants" [Lev. xxv. 55], which means my servants but not servants to other servants. (So one cannot make another one a slave even for one day.)

R. Hyya b. Aba, however, says in the name of R. Johanan, that "if one picked up an article for another, the latter acquires title; and if you should object to it from our Mishna, I would say that the Mishna speaks of a case when he said: 'Bring it to me and not acquire title for me.'"

MISHNA *III.*: If one has seen an article and he fell upon it, and at the same time another came and took hold of it, the latter has acquired title.

GEMARA: Said Resh Lakish in the name of Aba Kahna Bardala: "The four ells of a man gives title to him at every place. Why so? The rabbis made this enactment to prevent quarrels." (This sentence will be explained in the following discussion.) Said Abaye: R. Hyya bar Joseph objected to this from the following Mishna [Peah, IV., 3]: "If one took a part of the Peah and threw it on the remainder, he lost his share in it entirely." If one of the poor fall upon the Peah, or he spreads his garment upon it (with the intention of acquiring title to it), his act is ignored, and the garment must be removed. The same is the case with the forgotten sheaf [Peah, IV., 3]. Now if the statement of Resh Lakish is correct, why does he not acquire title to it with his "four ells" (when he has fallen upon it)?

The case was that he did not say: "I intend to acquire title to it." But if the above enactment of the sages exists, even if he did not say anything, what is it? With his falling he convinces us that only with this act he wishes to acquire title to it, but not with the four ells in question. R. Papa, however, said: The enactment of the sages regarding the four ells had reference only to a public place, but not on a private field; and although the Merciful One has privileged him to go in and to gather the Peah, he is entitled only to do that, but he is not privileged to consider it as his own property.

Said Rabha: "R. Jacob bar Idi objected the above saying of Resh Lakish from the Law of Damages stated in our Mishna: 'If one falls upon a found article and another took hold of it at the same time, the latter acquires title to it.' Now if Resh La-

kish's statement is correct, did not the former acquire title with his four ells?" This objection is answered in the very same manner as Abaye's objection. R. Shesheth, however, says: "The enactment of the sages is only in a *semita* (a kind of sidewalk where it is not so crowded), but not in the public street, where there is always a crowd and many have the same four ells." But did not Resh Lakish say: "In every place?" With this expression he means to include the sidewalks of the public streets.

Resh Lakish said again in the name of the same authority: "A minor female has not the right to acquire title in her property, and also the law of the four ells does not apply to her." R. Johanan, however, in the name of R. Janai said: That both of the above laws apply also to her. The two sages, however, do not differ—the former speaks of a divorce, the law of which will be explained in Tractate Gittin (Divorces); and the latter treats about a found article, which was in her four ells or on her property, she does acquire title.

MISHNA *IV.*: If one has seen people running after a found article which was on his field, or after a lame stag, or after unfledged pigeons, and he says: "My property shall give me title to it," his saying is correct. If, however, the stag was not lame, or the pigeons were fledged, his saying counts for nothing.

GEMARA: Said R. Jehudah in the name of Samuel: "The Mishna treats only of a case when he was standing upon his field." But let his property give him title, even if he was not standing upon it, did not R. Jose bar Hanina declare that the property of one gives title to him, even without his knowledge? Yea, but this is said only of a closed yard in which things are preserved; but in an open field, in which things are not, the title is acquired only when he is standing upon it, but not otherwise, as we learned in the following Boraitha: "If one was in the city and said: It is known to me that my employees have forgotten a sheaf in my field (I myself, however, did not forget it), it shall not be considered a forgetfulness as mentioned in the Scripture, lest one say it is not called forgotten; therefore it is written: 'And thou forgettest a sheaf in the field.' There it is considered a forgetfulness, but not if he has recollected it when he was already in the city." How shall the Boraitha be understood?

It is said, first: "Lest one say it is not called forgetfulness, by which we see that the Boraitha would state that it is considered as forgotten, and afterwards is proved the contrary, that it is not considered as forgotten."

We must, therefore, say that when he was still in the field it first escaped his mind, and then the minds of his employees; but if he kept it in his mind, and the employees forgot it, it is not considered as forgetfulness. And why so? Because when he was standing upon it, his property gives him title to it, even if afterwards it escaped his mind. But when he was in the city, even if he was aware of it, and afterwards it escaped his mind, it is called forgetfulness; because he was not on his field, his property does not give him title. And so it is, as Ula and also Rabba bar bar Hana explained our Mishna, that the case was only when he was standing upon his field.

R. A'ha, however, objected to Ula's statement: "There is a Mishna (Maaser Sheni, V., 9): It happened that Raban Gamaliel, with the Elders, were sailing on a boat, and R. Gamaliel said: The tithe, which I am going to measure, should be delivered to Joshu, and the place where it is now is leased to him. Another tithe for the poor should be delivered to Aqiba ben Joseph; he should take possession of it for the poor, and the place where it is now found is also leased to him." Now, were then R. Joshua and R. Aqiba standing upon R. Gamaliel's field, and, nevertheless, we see that they acquired title to it? And Ula answered him: This question fit coming from a man who never studied. When R. Abba came to Sura, he told the students of the college that so said Ula, and so I objected (and I did not get a satisfactory answer from Ula), said one of the students to him: "R. Gamaliel assigned to them movable property through real estate." R. Zera accepted this explanation. R. Abba did not. Said Rabha: "R. Abba is right in opposing it." Then was there not a *Sudarium*, through which usually title is acquired in consummating a sale? But as the grain, which was already tithe, would not be considered as R. Gamaliel's property, and he had only the benefit of choosing the men whom he likes to give it, and such a benefit is not considered as money, that it shall be sold by *Sudarium*, the same is not considered as money to acquire it through real estate. (But R. Gamaliel renounced his ownership,) and to ownerless property every one can acquire title. And for this purpose, R. Gamaliel leased his property to them, that it should belong to them for a certain time. So it is considered their property, and they acquire title to it. (Said the Gemara:) In the reality it is not as Rabha said, because the gifts that belong to the priest, it is written, you shall give to him, and therefore title cannot be acquired through a *Sudarium*, which is only an act of buying and selling.

But to assign movable things as real estate, it can be called a valid gift.

R. Papa, however, said: "In the above case of R. Gamaliel the title was acquired through his property, and nevertheless there is no contradiction to Ula's theory, because in this case the things of tithe which were assigned to the two persons named were not ownerless, but belonged to R. Gamaliel, and he transferred them through his property, and this suffices even if they were not standing on the property assigned to them." Said R. Shimi to R. Papa: "Let us see the case of a divorce,* where also a third person transfers it to her, and nevertheless, said Ula, the divorce is valid only when the woman is standing upon her property." In a case of divorce it is different, as the laws permit that it be delivered to her against her will. R. Shesheth, the son of R. Idi, opposed: "Is this not an *a fortiori* conclusion? namely, a divorce which is permitted to be delivered to her against her will, nevertheless it is necessary that she should be standing upon her property; so much the more, a gift the title of which is acquired only by the acceptor's will, it should be necessary that he should stand upon property." Therefore said R. Assi: "The theory of the *a fortiori* conclusion would not be applied here, as the reason why the property gives title is because her property is considered as her hand, and cannot be less in value than her messenger, who acquires title of a gift for her, even when she did not appoint him to do so, for the reason that it is self-evident she would not refuse to accept a gift." In the case of a divorce, however, which is not for her benefit, a messenger without her consent cannot accept for her in a matter which is supposed to be against her will; and there is a rule that a messenger cannot accept anything which is not beneficial to his principal. And the same is the case with her yard.

"If we have seen them running," etc. Said R. Jeremiah in the name of R. Johanan: "The case is, when the owner was running after them, and overtook them." He, however, propounded a question, what would the law be in the case of a gift, and R. Aba bar Kohana received the decision afterwards, that even if he had not overtaken them, he acquired title, because a third person transferred it to him.

Rabha propounded a question: When one throws a purse of money through an open door, and (after passing through the

* The law of it is explained in Tractate Gittin.

house) it came out through another opening, what is the law—has the owner of the house acquired title to it or not? Shall we say that, although the purse did not rest in the house, it is considered as if it had rested? Rejoined R. Papa, according to others R. Ada bar Mathna or Rabbina, to Rabha: "Is it not a similar case as in our Mishna, where it is said: 'When he sees them running,' etc., where R. Jeremiah said in the name of R. Johanan that he only acquires title when he ran after them and overtook them; and then he propounded the question, what is the law in the case of a gift, from whom afterwards R. Aba bar Kahana heard that by a gift he acquired title through his property even when without overtaking them?" In the case of our Mishna the animals were also only running through the field without resting there, and nevertheless it is said that the property gave title to him. The same is therefore even in our case. So Rabha rejoined: "Both these cases are different, as there, although the animals did not rest upon the field, still they ran upon it, and touching the ground may be considered as if they had rested upon it, which is not the case with the purse, which did not touch the ground at all."

MISHNA *IV.*: When a thing was found by the minor son or daughter of a man or by his man or maid servant, or by his wife, the found article belongs to him. When, however, it was found by his son or daughter of age, or by his Jewish man or maid servant, or by his divorced wife, although he had not yet paid the amount due according to her marriage contract, the found article belongs to the finder.

GEMARA: Said Samuel: "Why did the rabbis say that the found article of a minor son belongs to his father? The reason is that, as soon as he finds it, he runs with it to his father without any delay. (He picked it up, therefore, specially for his father, and so it belongs to the parent.) (Kethuboth gives another reason why the found article of his minor daughter or his wife belongs to him, and therefore here the question is only of the minor son.) Shall we say that Samuel is of the opinion that a minor cannot acquire title for himself, according to biblical law? (for if the minor could acquire title for himself, the rabbis would not say that the found article should always belong to his father, even in the case where the son is independent of his father and supports himself). Did we not learn: "When a man hires a workman to labor in his field, it is allowed for the son of the workman to gather the forgotten sheaves in the same field (in

case the son is poor)? When, however, the workman was working (as a partner) for a half or a third or a quarter of the products of the field, then his son is not allowed to gather." (As then the workman is considered as the owner of the field. The son is, therefore, not allowed to gather in the same field.) R. Jose, however, said: "Even in the latter case his son and his wife are allowed to gather in the same field (as R. Jose is of the opinion that the son even can keep that which he gathers for himself, and so he can do it even when his father is the owner of the field, when the son himself is poor)." And Samuel said that the law is according to R. Jose's theory. This would be right when we say that Samuel is of the opinion that a minor can acquire title in himself, for the reason that we say the minor gathers it for himself, and the father afterwards acquires title to it from his son (and therefore he said that the law is according to R. Jose). But when Samuel was of the opinion that a minor cannot acquire title for himself at all (how could Samuel say that the law is according to R. Jose, that the son may gather in the same field?), as the son can only acquire title to it for his father, and his father is a rich man; how is it allowed that the son as well as his wife may gather in the same field? Nay, this presents no difficulty, as Samuel only gives the reason of the Tana of our Mishna, but Samuel himself did not accept the theory. But does R. Jose really hold that a minor had a right to acquire title according to biblical law—is there not a Mishna in Tract Gittin, in which his opinion there contradicts his opinion here? Therefore Abaye said: "It is, however, allowed that the son may gather in the same field for the following reason (the rabbis consider this field as a field in which the gatherers after the youth were already in the field, in which case the sheaves are allowed to be gathered even by rich people, because the poor had already renounced their ownership in the field, and the same is the case with this field), that the poor (at the start) renounce their right to gather in this field, as they know that the son of the workman will gather in there where the father is working." R. Ada b. Mathna, however, objected to Abaye's statement: "Is it allowed for a man to put a lion in his field, that the poor men shall be frightened to run away when seeing it? (It means if the son has no right to gather in this field it should not be allowed for him to be there at all, and then the poor will not renounce their right to gather in this same field?)" Therefore says Rabha: "In this case they gave him the right to acquire title, although he cannot do so in other cases, because the other

poor men would be satisfied with this; for when they themselves will be hired as workmen, their sons also would be allowed to gather in the same field."

And he differs (*i.e.*, Samuel, with his above-stated reason of the Mishna) with the opinion of R. Hyya bar Aba in the name of R. Johanan, who said (about the expression "of age" and "minor" in our Mishna) that it is no matter if the son is of age or a minor; but even if of age, if he lives with his father and depends upon him, he is considered as a minor. On the other hand, even a minor, if he is independent of his father, is considered as of age.

"*The found article of his Jewish man or maid servant*," etc. Why? Suppose he would be only hired as a workman, we have learned: "When a thing is found by a workman, it belongs to him. This is only the case when the employer has said to him, Clean my field or dig it to-day; but when he has hired him for any work for the day, the found belongs to the employer." (And why, then, should not the case in our Mishna be the same?) Said R. Hyya bar Aba in the name of Johanan: "The Mishna treats of a case where the servant was working at a labor similar to piercing pearls, and his employer did not want him to interrupt his ordinary work with any other work, not even to pick up a found article, and therefore (even when it happened that he had found a very precious thing) it belonged to himself." Rabha said: "The case here is that he picked up the found article without interrupting his work (and therefore it belongs to himself)." R. Papa, however, said: "The case in the Boraitha, where it is said that the found article belongs to the employer, means only when the working-man was hired to gather found articles for him; *e.g.*, when his field was flooded, and he hired him to gather the cast-up fish."

(In such a case only any other found article belongs to the employer, but not in any other case.)

"*The found article of his wife*," etc. If she was divorced, is it not self-evident? The case was where it was doubtful if the divorce reached her legally, and in such a case the husband is still bound to support her; lest one say that for that reason her found article belongs to him, it comes to teach us that the reason why her found article belongs to the husband is only to prevent animosity, which cannot apply here, as here there is already animosity.

MISHNA *V.*: When one has found a note which secures real estate, he shall not return it, because it can be collected by the court; but if not, he shall return it, as it cannot be collected.

So is the decree of R. Meir. The sages, however, say: "He must not return (to the parties), as at any rate the case will come before the court and the money will be collected."

GEMARA: How is the case? Shall we assume that the debtor admits, even in the first case, why he shall not return to the lender, and if he does not admit, why shall he return it, even when there is no security, the note cannot be collected only from encumbered property, but from free property? The case is when the debtor admits, and the reason why it must not be returned is this: It is to be feared, perhaps, the note was written in Nisan, but he did not receive the money in question before Tishri. And if it will be returned to the lender, he will take possession of goods sold in the mean time against the law. If so, then why is it not to be feared in the case of all the notes which come before the court? In all the notes there is no weak point; but this note, because lost, has a weak point. R. Elazar said: "They differ when the debtor does not admit. R. Meir holds that a note without security cannot be collected even from unencumbered property, and the rabbis hold that it can be collected; but when there is an admission, all agree it must be returned without any fear that perhaps it is paid, and his admission is a *χοιγωγια* (a sort of conspiracy.)" R. Johanan, however, said: "They differ only when there is an admission, and the point of their difference is this: R. Meir holds that a note without security is collected from unencumbered property only; the rabbis, however, hold, that from encumbered property also. But in case there is no admission, according to all it must not be returned, because it is to be feared that the note is paid."

There is a Boraitha in support of R. Johanan objecting to R. Elazar's statement in one point and to Samuel's in two: "When one has found a note, if there is security, although both admit it shall not be returned to one of the parties; if, however, there is no security, when the borrower admits, it shall be returned to the lender; but if there is no admission, it must not be returned to either of them. So is the decree of R. Meir, as he used to say that notes to which there are security can be collected even from encumbered property; but if there is no security, it can be collected only from free property. The sages, however, say any note can be collected even from encumbered property." Hence there is a contradiction to R. Elazar's statement in one point, for he says: R. Meir holds that a note without security is not to be collected from any property, and he says,

also, that according to both R. Meir and the rabbis there is no fear for a *Kainunia*, and the Boraitha states that a note without security can be collected from unencumbered property, and it is also too plain to see that according to all, the Boraitha fears a *Kainunia*, in that it states that even when they both admit, it must not be returned. [But is this not two points in which R. Elazar is contradicted by the Boraitha? Nay, it is counted only one, because there is only one reason for both the theories, namely: As he interpreted it, the difference between the Tanaim of the Mishna in case there is no admission, he was compelled to say that such a note is not to be collected even from free property; and when, according to his interpretation when there is an admission, all agree that it must be returned, he was compelled to say that there is no fear for a Kainunia.] And there is a contradiction to Samuel in two points; the first one is the same as to R. Elazar's statement, as he also interpreted the Mishna when there is no admission; and the second is to Samuel's statement elsewhere, that if one has found a bill of sale he must return it to the owner without fear that it is a paid one, and the above Boraitha, which states that even if they both agree, it must not be returned to either of them, contradicts directly Samuel's statement, as we see that the Boraitha fears that it is paid even when they both agree; and so much the more in the case of Samuel, when the debtor does not admit. Samuel said: "The reason why the sages hold that a note without security is to be collected from all kinds of properties is, because that according to their supposition the mistake, in not mentioning the security, is made by the scribe, but there is no doubt that the lender who took the note had intended that the amount should be secured by all the property of the borrower." Said Rabha bar Ithi to R. Idi bar Abin: Did Samuel indeed say so—did he not declare elsewhere that the scribe must be advised by the owner regarding the increment to the field in case it is mortgaged, and will be taken away from him, and also that in such a case he shall have the right to collect his money from the best estate, and that all his estates are mortgaged to this sale, but he must not write such things without advice in the matter? Shall we assume that the one who said, in the name of Samuel, the above statement does not hold, that Samuel stated the last one, or both contradictory statements can be reconciled? There is no difficulty in explaining. The first statement of Samuel is in case of a money loan, in which usually one who gives money is very careful in securing all

the borrower's property, and if it was not so mentioned in the note it must be a mistake of the scribe's; and the other one is by a regular sale, in which it can happen that one needs an estate only for a short time and he does not care if it will be taken away from him afterwards, as it happened that Abuha bar Ihi bought the best estate of his sister. Afterwards it was taken away by one of her creditors, and he complained before Mar Samuel. The latter questioned him: "Is it mentioned in the bill of sale that her property is security?" And he answered "No." Then Samuel said: "You can go in peace." He questioned: "Did not the master say that the omission of security was only a mistake of the scribe?" And the answer was: "This is only in the case of notes on money loans; but in a case of a bill of sale, it can happen that the buyer needs the real estate only for a short time."

Rabha said: "If Reuben sold a field to Simeon with security, and the creditor of Reuben came and took it away, this is the law, that Reuben has a right to summon him before the court, and the creditor cannot say, I have nothing to do with you, because Reuben may claim that finally the debt will return to him for payment. According to others, the same is the case even if the field was sold without security, because Reuben may say: I dislike to have Simeon incensed against me."

Rabha said again: "If Reuben sold a field to Simeon without security, and before he took possession of it there were claims against it, he can retract; but not when the claims arose after he had taken possession, because the seller can say, You have bought a cat in a bag (without looking to see what there was in it), and therefore you must keep it." What act of the buyer is considered sufficient as a Hazaka (occupation)? When he has improved the borders of the field. According to others, the same is the case even when the field was sold with security, because the seller can say to him, Show me the warrant by which the field will be taken away from you, and I will repay the money to you, but not before. It was taught: "If one sold a field and it was found that it was not his, Rabh said: The money as well as the increase must be returned." Samuel, however, said: "The money only." The schoolmen asked R. Huna: "When the increase in question was stated plainly in the bill of sale, what is the law? Shall we assume that Samuel's reason rested on the theory that the increase was not stated, then in our case the seller is obliged to return; or that Samuel's reason rested on the theory that in reality he did not

possess any estate, and if the money paid would be returned with any increase, it would appear usurious?" R. Huna answered: "Yea and nay," as he himself was in doubt. It was taught, however, by R. Na'hman in the name of Samuel, that "the increase does not belong to him, even if it were in the bill of sale, for the reason just mentioned." Rabha objected to R. Na'hman from the following Mishna [Gittin, V., 1]: "Encumbered property is not liable either for the used fruits, for the increase of the estate, or for the support of the wife and daughters; for the benefit of humanity." (For if this would be practised, nobody would buy a field, for fear it might be taken away from him.) Now, from the expression "encumbered," it is to be inferred that free estate is liable even for the increase; and is this not the same case as when it was bought from one who did not possess any estate? Nay, a creditor may be meant. If it is so, how is the first part of the same Mishna to be understood, that "of the used fruit"? If there is a creditor, has he the right to use the fruit at all? Did not Samuel say: "The creditor has the right to collect from the field of its increase, but not of the fruits." We must, therefore, say that in this part the case of a robbery arises and, consequently, the latter part also treats of a robbery—why, then? Is it not customary in a Mishna that the first part should treat of one case and the other part of another? But is it not otherwise explained in the following Boraitha: "What is meant by the expression 'for the increase of the estate'? If one has robbed a field and it is to be taken away from him; the amount of the field is to be collected even from encumbered property; the increment, however, from unencumbered only." Now, how was the case? If we assume that it is from a robber, why should the robber get any benefit? It must, therefore, treat of a case where the robber had sold the field to another, and the other has increased its value, and nevertheless it is said that it must be paid for the increment also? Answered R. Na'hman: "And without your objection, could, then, the Boraitha be taken as it reads? It must be corrected; correct it, also, that it treats of a creditor." The Gemara raised another objection from the further explanation of the above Boraitha: Come and hear: "What is meant by the expression 'of the used fruits,' etc.?"

Here, also, it cannot be interpreted to mean that it was taken away from a robber, for the reason explained above; and it must treat of a case as explained above, and nevertheless it is said that for the used fruits is to be collected. (Are, then, not the fruits to be

considered as an increment?) Said Rabha: "The case was that one had robbed a field full with fruits, and he had consumed the fruits and digged excavations in it. When, then, the robbed one came to complain, he collected for the field even from the encumbered property of the robber, but for the fruits of his free estate only." Rabha bar R. Huna said: "It means that it was taken away from Gentiles for debt. The robbed one, then, when he complains, collects as above." Rabha did not explain as Rabha bar R. Huna, because the expression, "and it is to be taken away from him," is to be interpreted by the court. Rabha bar R. Huna did not explain as Rabha, because the same expression means that the field is to be taken away in good condition, and not when it was spoiled by digging. R. Assi, however, said: "The Boraitha is to be corrected, and it speaks of two different parties in the case as follows: If one robbed a field full with fruit, and he consumed the fruit and sold the field, then the buyer collects his money from the encumbered property of the robber, and the robbed one for the fruit from the free estate only."

Let us see: according to both Rabha and Rabha bar R. Huna, is this not a debt without any written document, the law of which is, that it cannot be collected from encumbered property? The case arose after it was decided by the court, which is equal in strength to a note. If it is so, why not the fruit also? The case was that the decision was for the principal estate, but not for the fruit. What compels you to interpret the Boraitha with such an explanation? Because usually men claim of the court first for the estate and after for the fruits.

Did Samuel indeed say that the buyer does not collect for the increase—did not Samuel say to R. Huna bar Shilath: "Be careful, in writing a bill of sale or a mortgage, to mention that it should be collected from the best estate, and the increase and the fruit?" Now, what case is referred to? If a creditor, has he then a right to the fruit? Did not Samuel say: "The creditor collects the increase, but not the fruit?" It must, therefore, be said that Samuel means to say that there is a suspicion that the seller is a robber? Said R. Joseph: "Samuel speaks of a case where such was the condition, that he should be responsible also for the increase, with the same legal formality." Said Abaye to him: "Is it then allowed to lend a saah of grain to get back the same measure (although the price of it may be then higher, seeming usurious), when it was in accord with the legal formality?" and

he answered: "There is a difference between a loan and a sale. Here it is a loan, and therefore it is allowed."

The text reads: "Samuel said: 'The creditor,'" etc. Said Rabha: "From this it is to be inferred that the seller shall write the bill of sale as follows: I, the first party, assign the goods to you, and I will discharge all claims which may arise against the sold property, and am responsible for the trouble and increase you may have made, and it shall also be testified to in this bill of sale that the transaction was consummated with good will, etc." Said R. Hyya bar Abin to Rabha: "If it is so, how would it be with a gift, in which case such a bill of sale is not made, as the donor would not care to take such a responsibility on himself? Does this affect the case so that the donor is not bound to pay for the increment?" And he said, "Yea, it is." "But if so, does then a gift give more right than a sale?" And he rejoined: "Certainly it has, because the buyer gets it returned from the seller, which is not the case with a gift."

R. Na'hman said: "The following Boraitha supports the statement of Mar Samuel, but my colleague, Huna, interprets it for other purposes, namely: 'When one sold a field to another, and finally it is to be taken away from him, he collects for the estate from encumbered property, but for the increment from free estate only. (Hence there is a support to Samuel's theory.) Huna, however, interprets that the Boraitha speaks of when it was bought from a robber.'"

We have learned in another Boraitha: When one sells a field and the buyer has improved it, and a creditor takes it away, then, when the buyer collects his money, if the value of the increase was more than the expenses, he collects the expenses from the creditor, and the difference between the expenses and the value of the increase from the owner of the field; when, in reverse, he collects from the creditor the value of the increase only, how would Samuel himself explain the above Boraitha? If the case is when it was bought from a robber, in the first part there will be a difficulty, as, according to his theory, no increment must be paid to a robber; and if it speaks of a creditor, then the whole Boraitha would not agree with him, as, according to his theory, a creditor collects the increment of the field (without being obliged to return the expenses?). The Gemara explains this: "If you choose, it speaks either of a case of where it was bought from a robber who possessed real estate, or when the increment was mentioned in the bill of sale with the legal formality.

And if you choose to explain that the Boraitha speaks of a creditor, here also it presents no difficulty, if you take into consideration that there is a difference between an increment that is not yet ripe, where in such a case a creditor can collect it, and an increment of grain, which is already ripe for harvest, which a creditor cannot collect. But is it not a fact that Samuel's court collects every day even from grain that is ripe for harvest? This presents no difficulty. When the claim is equal to the amount of the field with its increment (then the creditor collects the increase also). When, however, the claim is only for the estate, then he pays for the increment and takes the estate."

If one buys an estate knowing that the seller is not the real owner of it, and, nevertheless, he has paid money for it, then the money must be returned to him, but not the increment. So is the opinion of Rabh. Samuel, however, said: "Even the money is lost." In what point is their difference? According to Rabh the money was given by the buyer as a deposit, and the reason why he did not plainly say so was because he was afraid he would not accept it. Samuel, however, means that knowing that the property did not belong to the seller, he gave his money as a gift; and the reason why he did not say so is because he was afraid he would be ashamed to accept it. But let us see: According to both he has not bought the estate; how then did he take possession of it and consume its fruit? The buyer thought so: I, meanwhile, will work the estate and use its fruit as the robber did till now, and when the real owner of it will come, then the money shall be, according to Samuel, lost; or, according to Rabh, returned. Rabha said: "In case an estate is bought from a robber, the Halakha prevails that he collects both the amount and the increment, although the latter was not spoken of. In case the buyer had knowledge that the estate did not belong to the seller, and nevertheless he paid money and has improved the estate, the Halakha prevails that he loses the increase but not the money, and also that not mentioning the security in a bill of sale or a note given for a loan is to be considered as a mistake of the scribe, and not, as Samuel said, that the scribe must not do it without advice."

Samuel questioned Rabh: "If the robber, after he has sold it, bought it from the real owner, can he be substituted for the real owner, to take it away from his buyer?" And Rabh answered: Nay, because before the sale the intention of the (so-called) robber was to buy it from the owner; consequently, he

sold to the buyer the right which he would acquire afterwards. What is the reason for ascribing to him such an intention? Mar Sutra says: "Because it would be disagreeable for him to be called a robber." R. Ashi, however, says: "It is agreeable to one that he shall remain an honest man." What is the difference between these two opinions? There is a difference in case the robber has given the robbed field as a gift, according to him who says that it is agreeable to remain an honest man; the same is the case also in a gift; but according to him who says that he would not like to be called a robber, with a gift it is different, as he could not be called a robber even if the gift would be taken away from the donor.

It is self-evident that when (before the robber bought it from the owner) he sold it again to another man or bequested it, or gave it as a gift, then certainly his intention was to remove the goods from his possession, he sold it first; the same is the case when he inherited this estate; after he sold it, he may rescind the sale by returning the money, as here cannot apply the supposition that he intended to remain an honest man, as the estate came to him not through his effort; but in case he took possession of the field afterward as a creditor of the robbed one, then it is to be seen whether the latter possesses other estates; and the creditor insisted on having this field, then it is to be inferred that it is to remain in the possession of the buyer; but if not, then his intention is not certain and the buyer cannot insist upon this estate; but when he received it after it was sold as a gift, then R. A'ha and Rabbina differ: one maintains a gift is the same as an inheritance; the other, however, says that a gift is equal to a sale; for if he would not trouble himself to please the robbed one, he would not get this gift, and the intention to remain an honest man in the eyes of the buyer is applied here. At what time did he buy it from the robbed one, so that the above intention can be applied that the buyer can insist upon this sale? R. Huna said, when the robber bought it before he was summoned by the buyer to the court (but when he was summoned and he appealed to the court, then we see that the above intention was not in his mind, and he bought the field only for himself). Hyya bar Rabh said: "Before the judgment was in his hands." R. Papa said: "The time did not expire until the days of the proclamation began." *

* The custom was that, after a judgment was issued that the estate should be transferred from one to another, this act was to be proclaimed in public places.

Rami bar Hama opposed, saying: "Let us see what was the act by which the buyer acquired title to the estate; with the bill of sale? Is that not to be considered as a piece of broken clay vessel, as the estate was not his?" Said Rabha to him: "The theory of Rabh's statement can be explained, that when the buyer said to him, 'I trust upon your word that you will see that the estate shall remain in my possession without any trouble,' and for this satisfaction that his word was trusted, the intention mentioned above is to be applied here." R. Shesheth, however, objected from the following Boraitha: "If one says, 'I sell to you my inheritance from my father, or what I will catch with my net,' he says nothing. If, however, he said, 'I sell you what I will inherit from my father, who is dying, or what my net will catch this day," the transaction is valid. Hence we see that the sale of property which is not yet in possession is of no value?" Answered Rami bar Hama: "Here I see a great man with a wonderful objection." Rabha, however, answered: "I see the great man, but I do not see the wonderful objection, as the two cases have no comparison at all. In the case of Rabh, the buyer said to him, I rely upon you, therefore he troubles himself to make his sale good so that he shall not be called a robber afterwards; but here the buyer cannot rely upon him (because it was not known to him if he will inherit anything or not)." The above objection of R. Shesheth was sent to R. Abba bar Zabda, and he answered: "It would be of no use to bring this objection before the students, as it seems to me that they will not be able to answer it." Rabha, however, said: "It ought to be brought before the students of the higher class, for it seems to me they will understand the difference between the two cases as stated above. A similar case happened in Pumbeditha (and the court decided on Rabh's theory, and objection was made from the above Boraitha, and R. Joseph said then, as Abba bar Zabda and Abaye, the same as Rabha."

But what is the reason that in the latter part of the Boraitha the sale is of value? Said R. Johanan: In the latter part, when his father is dying, the sale is of value for the honor of his father (as it may be that he needs money for the expense of burial, and he sells it beforehand not to disgrace his father in delaying the burial). And what about the net? that is also an enactment of the sages to make the sale valid, as perhaps he needs food for the day.

R. Huna said in the name of Rabh: "If one says that the

estate which I am about to buy now shall be transferred to you at the same time that I acquire title to it, the title is acquired and it cannot be rescinded any more." Said Rabha: "It seems to me that Rabh's statement applies only when he said any field which I am about to buy, as the donee relies upon him; but if he mentioned a certain field, then the donee does not rely upon it, as he may think perhaps this field is not for sale at all (the Gemara said) by God, Rabh said even when he specified a field, as Rabh's theory is in accord with R. Meir [Kedushin II., 43*b*] that a man can grant a thing which is not yet in existence in a case of marriage, and our case is equal to that."

Samuel said: "If one finds in the market a note, made for a loan, which contains the legal formality that it should be collected even if the loan did not take place, it is to be returned to the creditor; for if it was written for the purpose of making a loan which did not as yet take place, yet the note is valid, as his promise was to pay at any rate, and there need be no fear that it was paid, because if so it would be torn." Said R. Na'hman: "When I was about six or seven years old, my father was among the scribes of Mar Samuel's court, and they used to proclaim that a note of the above-mentioned kind, if found, should be returned to the creditor." Said R. Amram: "This is also supported from the last Mishna. 'All documents signed by the court are to be returned.' Hence we see that there is no fear that perhaps it is paid." Said R. Sera to him: "The Mishna may speak of documents in which it is testified that, according to the order of the court, the creditor had already taken possession of the estate, or judgments against debtors who at that time had no property, and both kinds are not to be paid with money." Said Rabha: "Are these kinds of notes not payable? Did not the court of Nahardayi say that even an estate the value of which was ascertained and assigned to the creditor is to be returned till twelve months elapsed, and Amemar of the same place testified that he, as one of the judges of the above city, had declared there is always time it should be returned if paid." Said Rabha: "In those cases there is another reason, for, according to the law, the creditor would not be obliged to return the estate, and it is only an enactment of the sages to return it on account of the verse [Deut. vi. 6]: 'And thou shalt do that which is right and good in the sight of the Lord.' Therefore, when he took possession of the estate, it was considered as a regular sale, and also the debtor had either to tear the note made for a loan when

paid, or take from him a bill of sale; and by not doing so, he harmed himself, which, however, in the case of a common credit note, the above reason cannot be applied, for the following reason: It may happen that the creditor, when he got the money, promised him to return the note afterwards, as at this time it was not at hand, or he kept it back for the expenses of the scribe."

R. Abuha said in the name of R. Johanan: "If one finds a note on the street, although approved by the court, it shall, however, not be returned to the creditor, because it may be feared that the note is paid, and much less when such was not approved." R. Jeremiah, however, objected from the above mentioned Mishna: "All documents, etc." Said R. Abuha to him: "Jeremiah, my son, all cases are not equal! The Mishna may be explained so that it speaks of a debtor who was already known as a liar." Said Rabha: "And even in such a case, must it be taken as a rule that such a man never pays his debts?" "Therefore," says Rabha, "the Mishna in question explains as R. Sera said above." And as the case of a liar is mentioned, we may say thus: R. Joseph bar Minumi said in the name of R. Na'hman: "When one was ordered by the court to pay, and he claimed afterwards he had done so, he may be trusted (with a rabbinical oath). If, however, the court had only decided and the order was not yet issued, and the debtor claimed he had paid it, he is not to be trusted, and the creditor can get a judgment (when he takes a rabbinical oath)." R. Zebid, however, in the name of R. Na'hman said: "In both cases he is to be trusted; and when the creditor claims a judgment, it is not to comply with his request; therefore, if there is some difference in the above cases, it may be as follows: When he was ordered by court to pay his debt and afterwards he said he had done so, and there were witnesses that he had not, then he is considered a liar in regard to this money that he is not to be trusted when he says again he has paid it; if, however, it was only decided, but the order was not yet issued, and the witnesses contradicted him, he may be, nevertheless, trusted, if he says again he had paid, because his first statement was only to gain time, and he thought that until the judges would consider the matter that an order be issued the money would be paid."

Rabba bar bar Hana said in the name of R. Johanan: "If one claims hundred zuz and the other denies, but witnesses, however, testify for the whole amount; afterwards he says, I have paid it, he is considered a liar in this case." A similar case arose

with Shabbathai, the son of Mrinus, who assigned a silk garment to his daughter-in-law in her marriage contract, and she accepted it. Afterwards the marriage contract was lost, and he denied that such a thing was written in the contract; witnesses, however, testified that he had written; then he declared he had given her the garment, and when the case came before R. Hyya, he decided that the above Shabbathai is to be considered a liar in this case. R. Abin in the name of R. Ilaa, quoting R. Johanan: "If it was decided that the defendant take an oath, and afterwards he said he did so against the testimony of witnesses that he had not, he is considered a liar in regard to this oath." When this statement was reported to R. Abuhu, he said: "It seems that such a statement holds only when he was ordered by the court, but not when he declared himself willing to take an oath, as then it may happen that he had after reconsidered, and therefore he cannot be considered a liar." When this statement was reported again to R. Abin, he said: "So, too, was my declaration. And so it was taught elsewhere plainly." R. Asi said in the name of R. Johanan: "If one finds a note made for a loan which was approved by the court, dated the same day on which it was found, it must be returned to the creditor, because there is no fear that the loan did not take place, as it was approved by the court, and also there need be no fear that it was paid, as the loan was made only that day." Said R. Zera to R. Asi: "Did R. Johanan say so—did you not state in his name that if the loan was paid, one cannot use the same note for another loan, as its strength to collect from encumbered property ceased (from the moment it was paid)? Now, then, on what date does it mean that it cannot be taken for another loan? If for a later date, then this note cannot be used at any rate, as the note is of an earlier date. We must then say that it means it cannot be used for another loan on the same day." * And he rejoined: "Did I say that it can never happen? I said only it is not usual." R. Cahana said: "The statement of R. Johanan treats only when the borrower admits that the note was not yet paid. If so, what comes he to tell us? Lest one say the note is paid, and the reason the debtor admits that it was not paid is only because he wants to take another loan, and save the expense of writing another note, he comes therefore to teach us that it is not so, as in such a case the creditor himself would oppose, for the reason that if this would be heard in the court it would cancel the note."

* Hence we see it may happen that a loan may be paid on the same day?

R. Hyya bar Abba said in the name of R. Johanan: "If one claims to have done what was enacted by the court to do, he says nothing; for the enactment of the court is good as if one held a note in his hand." And the same, when he heard this, asked R. Johanan: "Is this not said in the [Kethuboth] Mishna: When a woman shows her divorce without the marriage contract, she nevertheless collects what is written in the marriage contract?" Answered R. Johanan: "If I would not take away the broken vessel which had covered the pearl, thou hadst not found it." Said Abaye: "Why, then, this Mishna may treat of such places where it is not customary to write a marriage contract at all, and so the document of divorce is considered as if she had the contract in her hand; but where the above contract is customary, she cannot collect without it. After consideration he retracts the former statement, and said what I said above cannot be the reason; for if such is the case, that where the contract is written she cannot collect it without the contract, how should she collect when she becomes a widow after betrothal (with a ring, as the custom was then, and from that time she was already considered a married woman; the marriage contract, however, was written after the official marriage)? You can say that she collects it when she brings witnesses that her husband is dead; then this would count nothing, as the heir could nevertheless say that he had paid already; and lest one say that it is so, then to what use would be the enactment of the sages that the woman shall get support."

MISHNA *VI.*: **When one finds documents of divorce, of enfranchisement of a slave, of presents, or of receipts, he should not return them (to the person for whom they were made), because it may be that the person who had written the documents had changed his mind not to give them for whomever they were written.**

GEMARA: Rabba bar bar Hana lost a document of divorce (which he had to deliver to the women as a messenger) in college, and when it was found he said: "If you require signs to identify the document, I have them; and if I am trusted by you to recognize it, then I recognize it" (and he had done both, he had told what were the signs and also recognized it by sight). When it was returned to him he said: "I cannot tell if they did it on account of the signs, as they hold that the biblical law requires only signs; or signs only would not be sufficient, and it was returned only by sight, in which only a scholar is trusted, but not a com-

mon man." (There is an objection to our Mishna from the following Mishna:) "If one has found in market a document of divorce, and if her husband admits that he wrote such a divorce he shall return it to her; and if not, he must not return it to either of them." Now then, it states that when the husband admits, it may be returned. Why then: let it be feared that perhaps the husband wrote the divorce to deliver it in the month Nissan, and he had not given it to her until Tishri, and in the meantime he had sold (legally) the fruit of her property, which was produced from Nissan to Tishri, and afterwards when the woman would collect with the same divorce, she would take away from the buyers the products from the time it was written illegally. This, however, would be correct according to him who holds that as soon as the husband has decided to divorce her, he has no more right to use her products; but according to him who holds that he has a right until the divorce is delivered, what can be said? When she comes to collect, it can be said to her, Bring evidence at what time the document was delivered to you. But why should this be different from the note made for a loan stated above, where he must not return it, even when the debtor admits, for the same reason stated above by the divorce, let him there also return it to the creditor, and when he will come to collect, evidence shall be required at what date the note made for the loan was delivered to him? It may be said, in the case of a divorce the buyer can say that the rabbis had decided to return the divorce to her only for the purpose that she should be able to remarry; but regarding the collecting, she must bring evidence when the divorce was delivered to her, but by a creditor the buyer cannot say anything. Now is it obvious that the purpose the robbers had in returning to him the note was for collecting.

The rabbis taught: "If one finds a document of enfranchisement on the market, if the owner admits, it may be returned to the slave; and if not, it must not be returned to either of them." It states, however, that when the owner admits, it may be returned to the slave. Why should it not be feared here the same as above, that the document was written in Nissan and was not delivered to him until Tishri, and meanwhile the slave had bought property for himself, and the owner (who had not yet delivered the document) sold out, and when the slave came with his document of enfranchisement, which was written in Nissan, he will certainly collect it illegally? The above answer can also

apply here, that evidence will be required from the slave at what time the document was given to him.

"*Wills or presents*," etc. The rabbis taught: "What is to be considered a will? if it is written, the property so and so shall belong to so and so after my death; and what is considered a note for a gift, a present? if it is written, the property so and so belongs to so and so from this date, but he cannot sell it or use its fruit until I die. Is it to be assumed that if it was written it shall belong to so and so from to-day without the above explanation, the donec did not acquire title of it! (he certainly acquires title to sell it and to use it from that day)." Said Abaye: "The Boraitha means to say thus: When is the note for a gift to be considered equal to a will? If it is explained that he shall not take possession of it before his death."

Now let us see, after all the discussion above, the reason for our Mishna that it shall not be returned because the testator did not consent to return it; but if he does, it may be returned; is that not contradictory to the following *Boraitha:* "If one has found documents of wills, of hypothecation, or presents, although both admit, it is not to be returned to either of them?" Said R. Zebid: (It is not as Abba bar Mamal tried to explain the above contradiction that one speaks of a healthy man and one of a sick man, but) "both speak of the latter case, and nevertheless there is no contradiction, as our Mishna treats of a case where the testator himself, who can change his mind to assign it to anybody, said, Give to another; so that if it would be returned to whom it was first assigned, he would not acquire title to it, but the last one would: and the Boraitha which states that it shall not be returned speaks of the son of the testator, and the reason is, it is to be feared that perhaps the testator has not given it to him because he has decided to assign it to another; and, therefore, he did not deliver it to him, and the son, after the death of the father, to whom the intention of his father was known, assigned the estate to another and already delivered the document to him, and afterwards he decided to give it to the one to whom it was previously assigned by his father, but as the document was already given to the second, and he could not retract it, he declared that the father's will was, to deliver it to whom it was first assigned with the intention that the latter should summon the party to whom the son had delivered his document, so that finally the estate should be divided among them. The court, therefore, may say it will not be returned for the reason explained

above; but if you wish that the man in question should get the estate, go and draw up another document and deliver it to him and then the will of your father will be complied with.

The rabbis taught: "If one finds a receipt (of a marriage contract), it is to be returned to the husband when the woman recognizes it, but not otherwise." Now then, why should it not be feared the same as above? Perhaps she wrote it to deliver it in Nissan and she had not delivered it before Tishri, and in the meantime she had assigned to somebody else her marriage contract for the benefit of the products in the interim from Nissan to Tishri, and afterwards if the goods would be collected by her receipt, it would be illegal." Said Rabha: "Infer from this, that the Boraitha is in accord with Samuel, who says: 'When one sells a note made for a loan and afterwards he relinquishes the debt mentioned in the note, it is relinquished, and even his heir can do so (so that the debtor must pay nothing and the money taken for the note is to be returned).'" Abaye, however, said: "Even if we should say that Samuel's decision is not to be considered, the case in question is to explain when the marriage contract is in her possession and she brought it before the court. According to Rabha's theory, however, the marriage contract is not to be considered, for she may have had two." Abaye, however, rejoined: "First, it is not to be feared that there may be two; and secondly, the collection on account of the receipt takes place from the date it was signed, no matter when it was delivered." The last statement of Abaye is in accord with his theory elsewhere, that witnesses with their *signature* give title to whomever the document was written.

MISHNA *VII.*: One who found documents in which was assigned by the court the property of the defendant in benefit for the plaintiff, or obligations of supporting (his step-daughter, or) documents of Haliza or such where the annulment of a marriage of a female minor is expressed, documents of a claim and of arbitration, and other documents made by the court, are to be returned to whomever they belong. When one finds a note in a *καψα* or bag or a roll or a bunch of notes, it must be returned. What is to be considered a bunch? Three bound together. R. Simeon ben Gamaliel says: "When three notes of the same debtor and different creditors are found, they should be returned to the debtor; but if three different debtors from one creditor, then to the creditor. If one finds a note among his own notes and he does not know to whom it belongs, it shall be placed in court

until Elijah will come. If there is a *συμφωνια*, he shall act according to it."

GEMARA: What is meant, claiming documents? In the college of Babylon they used to explain it as documents of plaintiff and of the defendant. R. Jeremiah, however, said: "Documents of the arbiters taken by the parties."

"And all documents made by the court." There was found a divorce which was written in the city of Shevéré, which was situated on the river Rackth, and it was brought in the court of R. Huna. Said R. Huna: "It is to be feared that there are two cities of such a name (therefore it is doubtful if it may be returned)." Said R. Hisda to Rabba: "Look up this matter, for in the evening R. Huna will inquire about it of you." Rabba did so, and found the quotation stated above in our Mishna. Said R. Amram to Rabba: "How can you, master, decide the matter of a legal marriage from a money case?" And he answered: "Tardus! Did not the Mishna state documents of Haliza, etc. (are these not documents of legal marriage)?" In the meantime the pillar of the college broke, and each of the above sages claimed that this happened as a punishment for the disgrace of his honor (Rabba because he was insulted by the expression of R. Amram, and the latter because he was ashamed of being called Tardus).

"A roll or a bunch of notes." The rabbis taught: "What is called a roll?" If there were no less than three; and a bunch must contain the same number, but in this case they must be tied together. Shall we infer from this that such a knot is to be considered as a sign of identification? Said R. Hyya: "It treats of a case where the notes of the bunch were also rolled, one in the other." If it is so, then it is a roll (already mentioned above). A roll means that each of the notes was rolled separately in it; and a bunch means they were rolled together. What shall be proclaimed: the number? Why, then, no less than three: must he not proclaim it even when there were two? As Rabbina said elsewhere, that if one finds a number of coins he must proclaim that he found money without mentioning the number and without explaining what kind of money, the same is the case here, he shall proclaim: "I have found documents," without any explanation (and the loser must explain their condition and how many).

"R. Simeon ben Gamaliel," etc. If they belong to the creditors, how could they be together? But perhaps they were

lost by the creditors while going to register them. The case was when they were already registered. But perhaps they were lost from the hand of the register. It is not usual for one to leave his registered note with the register.

"When three borrowed from," etc. For if they were lost by debtors, how could they be found together? But perhaps they were lost on the way from the scribe's. The case was when three different handwritings were found. Perhaps they were lost on the way to the register's? Usually the creditor registers the note, but not the borrower.

"If there is," etc. R. Jeremiah bar Abba said in the name of Rabh: "A συμφωνια that is in the hand of the creditor is invalid even when it was written by himself, as it may be that he prepared it in case the debtor would give him the money at a time when it would not be easy for him to make a receipt, and much less when it was written by a scribe, as it may be that he expected money from the debtor, and while waiting for it, it happened that the scribe called upon him. Does not our Mishna, which states he shall do accordingly, contradict Rabh? As R. Saphra said elsewhere, if it were found between torn notes, so also can be explained our Mishna. An objection was raised. Come and hear: "A συμφωνια in which was proved by witnesses (and the creditor denies that he received the money), it is sufficient if the witnesses admit their signatures." Read: The witnesses must be questioned if they saw the payment. There is another objection: "A συμφωνια which is proved by witnesses is valid." It means that the payment was approved by the court, and this explanation seems to be right, as the latter part states that if there are no witnesses it is invalid, and it cannot mean that no witnesses at all, as this would be self-evident. Hence it must be explained that when it was not approved by the court, it is considered as if there were no witnesses. In addition to the text mentioned above, we learn: "If there were no witnesses, but it was in the hands of the depository, or it was placed below the signatures, it is valid: and the reasons are that a depository was trusted by the creditor; and below the signatures, because if it would not be paid, he would not permit them to spoil the note."

CHAPTER II.

LAWS RELATING TO FOUND ARTICLES, WHICH MAY OR MAY NOT BE KEPT WITHOUT PROCLAMATION, AND HOW FOUND ARTICLES SHALL BE CARED FOR, ETC.

MISHNA *I.*: There are found articles which belong to the finder without any proclamation; namely, scattered fruits or scattered money in a public thoroughfare, small sheaves, strings of pressed figs, bread of a baker (as all bread of the baker is alike; home bread, however, differs, and is recognizable), strings of fish, pieces of meat, and shorn wool from the country where it was shorn, cleansed flax, and stripes of scarlet wool—all these belong to the finder (when it was found in such a place where people pass). So is the decree of R. Meir. R. Jehudah, however, maintains: If there is a change in the found article, which usually ought not to be, as, *e.g.*, he found a fragment of a clay vessel in pressed figs, or he found a coin in a loaf of bread, he must proclaim. R. Simeon b. Elazar says: All stew vessels which are for sale he need not proclaim.

GEMARA: How much of the scattered fruit belongs to him without proclaiming? Said R. Itzhak: "If in a distance of four ells there were scattered fruits the measure of kab." Let us see in what condition did he find it. If it was placed in such a way as dropped unintentionally, why only a kab? Even if there are more, it should be his; and if it was placed in such a manner that it can be supposed they were placed intentionally, even less he should proclaim. Said R. Uqba bar Hama: "It treats of a place where the grain is gathered from the barns, and if he found the size of one kab scattered within four ells, which it is too much trouble to gather, the owner of it usually would not take such trouble and renounce his ownership, but if it were scattered within a shorter distance, he may think, 'I will take the trouble to pick it up afterwards,' and he does not renounce his ownership." It was taught: "The renouncing of hope in regaining a lost article, which it is not yet certain is lost (*i.e.*, the article was found before the loss was known to the owner, but usually, becoming aware of its loss, he will not try

to regain it). According to Abayi such must not be taken in consideration, and Rabha, however, maintains it may." They, however, do not differ when the article has a mark that in such a case it must be supposed that when he will become aware of it, he will not renounce his hope to regain it because of the mark; and even if thereafter it was heard that he had renounced his hope, still the finder has not acquired title, because at the time he found it, it cannot be considered that the hope should be renounced when the owner becomes aware of its loss, because there is a mark, and he will certainly think, " I will try to search for it by identifying the mark." The same also do not differ when the article was found at the seashore or near a waterfall, that it belongs to him, even if it has a mark, because the law allows it, as will be explained further on; the point of their difference, however, is in case the article has no mark. Abayi is of the opinion that the finder cannot acquire title to it, because the owner is not yet aware of his loss. Rabha, however, maintains that he does, because it is certain when the owner becomes aware of it that he will renounce his hope. Come and hear. Our Mishna states: " Scattered fruit, it is his." Although he did not know whose it was? Said R. Uqba b. Hama: " The Mishna means a case in the season of gathering the grain from the threshing floor, which is considered an intentional loss." Come and hear. Scattered money belongs to him, and certainly the loser of it was not aware when he lost it (as if he were, he certainly would pick it up), and nevertheless it belongs to the finder. This can be explained as R. Itzhak said elsewhere: " Usually a man inspects his purse frequently (and the loss of his money was already known to him when the finder picked it up)." Come and hear the other part of the Mishna: " *Pressed figs and bread of a baker, it is his.*" Why, the owner was not aware of it? It also can be said because such are of great value he must have been aware of the loss. [The same was objected to, based on further expression of our Mishna, " Stripes of scarlet wool," and the answer was the same as above.] Come and hear (another objection). " *χασσια* which were found in a public thoroughfare, although they were near the field where they grew, and also a fig tree the branches of which were bent toward the street, and one found figs beneath, the people are allowed to eat these, and it is not considered robbery; they are free from tithe." Now the Boraitha would not contradict Abayi, as the cassia are of great value, and it is known where the fruit of the

fig tree would drop; but the latter part of the same Boraitha states that if it were an olive tree or carob, it is prohibited. Would not this be a contradiction of Rabha's statement? Said R. Abbahu: "It is different with an olive tree, as the color of the olives is the same as that of the tree, and they can be recognized wherever they are found* (and therefore the owner of them does not renounce his ownership, thinking that any one will recognize that they are his). If so, why should it be the same with the fig tree mentioned above? Said R. Papa: When figs drop, they become soiled (therefore their owner does not care for them any more). Come and hear. A thief or a robber who took an article from one and gave it to another, or an article falls into the Jordan and is washed up at another place, and some one picked it up, the latter is entitled to it. Now this would be correct concerning a robber or the Jordan, where the owner sees his article lost, and renounces his hope of regaining it; but with the case of a thief, has then the owner seen him, that he should renounce his hope? R. Papa interprets the Boraitha, saying that it treats of an armed robber; but is it not the same as a robber, which case has already been mentioned? It treats of two kinds of robbers. Come and hear: "If the river has flooded one's beams, wood, or stones, and carried them away to another field, the latter may use them, because their owner has lost his hope." We see that the reason is because it was certain that the one had renounced his hope already, but when uncertain it is not to be used (and this would contradict Rabha). The case was that the owners could have saved the articles; if so, how is the latter part of the same to be understood? If the owner came to get them, he is obliged to return them. Now, why going to get them? If he could save them he should be obliged to return, even if he had not come to get them, etc. The case was that he could save them with great trouble. If he came to get them, we see that he had not renounced his hope; and if not, it is to be supposed that hope is renounced. Come and hear (another objection). How can a case be where one shall separate heave-offering without the knowledge of its owner, and nevertheless the heave-offering

* The text here is complicated, and some of the commentators try to correct it; nevertheless, Rashi's opinion and Tosphat's opinion concerning it differ; the commentators after them, such as Lurie and Meier of Lublin, and also Edlias (Marsha), discuss it also. We, however, have translated as best we could, so as to make it understood.

shall be valid? Thus, if one goes to the field of his neighbor and gathers grain, and has separated the heave-offering without knowledge of the owner, if robbery can be suspected, the heave-offering is not valid; and if not, it is; and how does he know that there is no robbery? When the owner appears while his neighbor is on his field engaged in the above-stated work, and said to him, You should separate for the priest from the better ones; then, if better ones are found, the heave-offering is valid, but if not it is invalid (because the remark of the owner was but ironical, as there *were* no better ones). If, however, the owner had added to the heave-offering, it is valid, although better ones were not to be found. We see, then, if there were better ones the heave offering is valid, though the separator did not know of it while doing so (let it be the same with regard to renouncing hope, that even when it comes afterwards, the finder shall acquire title even before the renouncing was known?). Rabha explained this in order that the Boraitha shall agree with Abayi's theory: "The owner, with his remark, appoints his neighbor to be his messenger." (Said the Gemara:) It seems that Rabha's explanation is correct, for if he would not become his messenger, how can his act be of any value? Is it not written [Numb. xviii. 28]: "Thus shall ye also offer," etc., and from the word "also," which is superfluous, it is declared that it includes a messenger, and it is also declared there that as the word "ye" means "it shall be done intentionally," so also if this is done by the messenger the intention is necessary? (hence we see that only a messenger has the right to separate heave-offering), and the above Boraitha must therefore be explained that he appointed him as a messenger, saying, "Go and separate"; but he did not determine of which grain he should separate. And usually the owners separate from the middle one; the messenger, however, does so from the better one; now when the owner comes and says, "Why did you not separate from the better one?" if there is to be found still better than he had separated, his act is valid; but if not, the saying of the owner must be considered ironical, and the messenger's act is of no avail.

Amaimar, Mar Zutra, and R. Ashi happened to be in the garden of Mari bar Issak, and the gardener placed before them dates and pomegranates. Amaimar and R. Ashi partook. Mar Zutra, however, did not; meanwhile the host came and said to his gardener: "Why did you not serve the rabbis with the best

ones?" Said both Amaimar and R. Ashi to Mar Zutra: "Why does the master not partake of it now? Have we not learned if better ones are to be found the heave-offering is valid?" And he answered: "So said Rabha, that this expression is to be cited in case of heave-offerings only, because it is a meritorious act, and it may be assumed that the owner made his remark with good intentions; but here, it can be said that he said so to the gardener only not to be ashamed (to be considered niggardly)." Come and hear. R. Johanan said in the name of R. Ishmael b. Jehouzadok: "Whence do we know that a lost article, which was flooded, is allowed to be used by one? Because it is written [Deut. xxii. 3]: 'In like manner shalt thou do with his ass, and in like manner shalt thou do with his raiment, and in like manner shalt thou do with every lost thing of thy brother's which may have been lost by him, and which thou hast found.' From which it is deduced that when it is lost to him, but not to others; exclude, then, the flooded article, which is lost to him and also for every one; and as in the case of flooding the article is allowed for use, no matter whether it had a mark or not, the same is the case with an article which is not allowed for use, when it is not certain that the owner of it has renounced his hope. No matter whether the article has a mark or not, it is prohibited, even in case where the hope would be renounced by the owner immediately after he became aware of his loss." Hence Rabha's statement is objected to, and the Halakha prevails according to Abayi, as this is one of the six things. (See Baba Kama, p. 163.)* Said R. Achi' the son of Rabha to R. Ashi: "Now as it is decided that Rabha's statement is objected to, how then do we eat dates which the wind blows away to the highway?" And he answered: "Because there are insects which consume them; the owners of the dates therefore renounce their hope of such." The former questioned again: "In case the trees belong to orphans, who are disqualified to renounce their hope, let therefore all fallen dates not be used." And he rejoined: "Must we then consider that the whole valley belongs to orphans?" The former said again: "But if it be known that such is the case, how is the law?" And he rejoined: "Then it is prohibited."

"*Small sheaves,*" etc. If the mark on the article in ques-

* In Tract Sanhederin the six cases will be named.

tion was of such a nature that it could be effaced by stepping on it, Rabba said: "That such a mark is not to be considered." Rabha, however, said: "It is." An objection was raised from our Mishna. Small sheaves in public thoroughfare may be used without proclamation, but if they were found on private ground he may take it provided he proclaims. Now how was the case?

If it treats of such that have not a mark, what shall he proclaim? We must, therefore, assume that although they have a mark they are his if found in public thoroughfares, because the mark is usually effaced by stepping upon it; hence it is an objection to Rabha. He may say that the Mishna treats of such that have not a mark, and your question, What shall he proclaim if on private ground? is to be answered that he shall proclaim the place where it was found, as it was taught that both sages mentioned above differ concerning the place. Rabha maintains that it is a mark, and Rabba says it is not.*

Said R. Zbid in the name of Rabha: "The rule concerning a lost article is this, as soon as the owner exclaims, 'Woe, the damage I have had!' he does not care to search for it any more (it is considered renouncing of hope, etc.)." The same said again, in the name of the same authority: "The Halakha prevails that sheaves on public ground belong to the finder in all cases; however, in private thoroughfares, if it was found in such a manner indicating that it was dropped, it can be used, and if indicating that it was placed so intentionally, he may take it providing he proclaims; and in both cases it is only when it has no distinguishing mark; but if there were, no matter in which place, and how they were placed, he must proclaim."

"*Strings of fish,*" etc. Why? Let the knot be the required mark? It means, *i.e.*, that it was found in the way as fishermen usually tie it; but let the number be the required mark. Such a number is used by all fishermen.

R. Shesheth was questioned whether a number is considered a distinguishing mark or not, and he answered: "We have learned this in the following: 'If one found silver or copper vessels, a cassiteron of tin, or any other metal vessel, the finder need not return it, unless the owner of it identify it by a mark

* In the text here similar questions are continued from the Mishna and Boraithas concerning marks and articles which are destroyed by stepping upon them, and also about places, whether it should be considered a mark for proclamation or not. Objections and answers are made to the opinions of the above sages in the same manner as above, which is already translated, and therefore we have omitted them.

or the exact weight of it.' Now, as the weight is a mark, the same is the case with the size and number."

"*And pieces of meat*," etc. Why let the weight be a mark? when the weight was as customary with all butchers. But let the kind of the piece be a mark, *e.g.*, leg or shoulder, etc. Have we not learned in the following Boraitha: If one found pieces of fish or a bitten fish, he must proclaim; barrels of wine, oil, grain, dry figs, and olives are his? It treats of a case when there was a distinguishing mark in cutting it, as Rabba bar R. Huna used to cut it in the form of a triangle. It is so also to be inferred from the statement "a bitten fish" (and this is certainly a distinguishing mark, so also pieces of fish mean which were cut differently). The master says barrels of wine, etc.; but have we not learned in a Mishna further on: Pitchers of wine or oil he must proclaim? Said R. Zeira in the name of Rabh: "The Mishna treats of a case when the pitchers were sealed and marked. If it is so, then the Boraitha treats of a case when they were found open: must it not be considered an intentional loss (*i.e.*, when open it would be spoiled by reptiles, vermin, etc.)?"

Said R. Houshea: "It treats of a case when it was covered with a cork, and not smeared with clay."* Abayi, however, said: "It may treat also of sealed ones, and nevertheless it does not contradict the Mishna, as the Mishna speaks of a case when the market for wine was not yet opened, and the barrel found was of one who had sealed it with a mark which could be recognized. The Boraitha, however, speaks of a case after the market was opened, and usually the marks on the barrels were all alike, and could not be distinguished from each other, as it happened with Jacob bar Abba, who found a barrel of wine after the market was open, and he questioned Abayi and was told that he may keep it for himself."

R. Bibi questioned R. Na'hman: "Is the place (where it was found) considered a mark or not?" And he answered: "This we have learned in the above Boraitha: 'If one found barrels of wine, etc., they are his'; now if the place would be considered a mark, then why should he not proclaim the *place?*" R. Zbid, however, said: "This is no support, as it may treat

* Rashi explains it thus: In their time the barrels were of clay, and also the cork, and they usually put glue around the cork to save the smell. In the month of Shebat or Nissan, when usually the wine merchants would sell to the store-keepers several barrels at once, they would open each of them, to taste, and to again cover it.

of a case that when he found it on a dock where many barrels were placed."

R. Mari said: "The reason why the sages decided that the place is not to be considered as a mark, was because it can be said to him who claims that the article was lost by him in this place, that there were men passing the same, and another one may have lost it there."

It happened that one found unripe dates* near the wine-press room, and questioned Rabh, and was told that he may keep it for himself; the man, however, hesitating, and Rabh said to him: "You may give a part of it to my son, Hyah." Shall we assume that Rabh holds that a place is not to be considered as a mark?

Said R. Abba: "Rabh's reason was, it was seen on this article that the owner had renounced his hope in it, as it was already mouldy."

"*R. Simeon b. Elazar said*," etc. What does he mean by the expression *new* vessels? Said R. Jehudah in the name of Samuel: "By the word new he means that the eye was not acquainted with it." How was the case if the vessels had a mark? What is it if the eye *was* not yet acquainted with them, and if there was no mark? What use is it that the eye should be acquainted with them? It can be used to return it to a young scholar who claims that he recognized them by seeing. If the eye was acquainted with them, we do so; if not, we do not. As R. Jehudah said in the name of Samuel in the following three things. The rabbis hesitate to tell the truth when being questioned in a tractate (*e.g.*, if some one asked, can you repeat the tractate so and so by heart, they answer no, although it is not true, out of modesty), and in conversation between him and his wife, and also about the hospitality of a private one, they usually answer in the negative, although it is not so (because people should not abuse his liberality and bring the man to poverty). And when it was questioned to what purpose did Samuel declare the above, Mar Zutra answered: "It was said with regard to returning a lost thing to one of the rabbis, if he recognized it with his eye, if we know that only in the

* The text reads Kufra, and Rashi explains it to mean pitch. We, however, cannot agree with such an explanation, as the place where it was found, and also that Rabh told him to give a part of it to his son, could not be with such an article. We find the same word Kufra in Baba Kama, p. 140, which is translated as we have it here.

above three things he hesitates to tell the truth, but in all other things he speaks the truth, then the article in question is to be returned to him, but not otherwise."

It happened that a silver goblet was stolen from Mar Zutra the pious, when he was in a *hospes;* in the mean time he saw a young man who dried his hands, after washing, with the garment of another, and he thought, this man does not care for his neighbor's money, and he accused him until he confessed that he stole the goblet. We have learned in a Boraitha: R. Simeon b. Elazar admits that new vessels, in case the eye was familiar with them, that he must proclaim them; however, the following new vessels which were not familiar to the eye he need not: namely, strings of needles, spinning instruments, and strings of hooks, but only when he found single strings; if, however, he found a pair of each, he must proclaim. The same R. Simeon used to say: " If one saved something from a lion, a bear, a tiger, or a bardalas, or from the sea, or if he found it on a dock or in one of the great markets, and in any place where it is crowded, he may keep it for himself, as the owner of it has surely renounced hope.* It happened that one found four zuz tied up in a rag, and was dropped in the river Biron, and he came before R. Jehudah and was told to proclaim. Why so; is it not equal to the depth of a sea, as stated above ? With the river Biron is different, because it was frequently cleaned, and there were stones and fences for fishing, the loser may not renounce his hope in regaining it; furthermore that the majority of the fishers and the cleaners of that river were Israelites, and the loser may think that in case an Israelite finds it he may return it.

R. Jehudah was walking behind Mar Samuel in the market, where wheat prepared for fermenting was sold, and R. Jehudah questioned him: How would be the case if some one should find a purse here ? And he answered: It would belong to the finder. But how if an Israelite would come and give the mark of it ? (the former questioned again). And Mar Samuel answered, then he would be obliged to return. The former rejoined: Are not the two decisions contradictory ? And he answered: I mean not according to the exact law, but by moderating the

* In the text the discoursing continues on what places must be considered always crowded, and what not; if the synagogues and houses of learning are among them, and what kind of people, Israelites or heathen, all of which is of no importance, and therefore we have omitted it.

same, as it happened to my father, who found certain asses in a desert and returned them to the owner after an elapse of twelve months; though he was not obliged to do so in accordance with the strict law, he nevertheless did so by moderating the same. Rabha happened to walk behind R. Na'hman in the market of tanners, according to others in the market where the rabbis used to assemble, and he questioned him: How if one would find here a purse? And he answered: It would belong to him. And how if an Israelite would claim that it is his by giving a mark? And he answered it counts for nothing; but if he claims with a certainty that it is surely his, Rabha said again. And the latter rejoined, it would be equal to him who cries for his collapsed house or for his sunken ship (as the ownership of it is lost with the losing).

There was a vulture which captured meat in the market, and put it between the trees of Bar Marian, and when Bar Marian came to question Abayi, he was told to keep it for himself. Although the majority of the inhabitants were Israelites, hence infer from this that the Halakha prevails in accordance with R. Simeon b. Elazar of our Mishna, even in case the majority are Israelites? With the vulture it is different, as it may be just as the depth of the sea. But did not Rabh declare that meat which was hidden from the eye must not be eaten for fear it is not legally slaughtered? It may be said that Bar Marian saw the vulture taking it from a place where legal meat was sold. R. Hanina found a slaughtered goat on the way from Tiberias to Ziporus, and he was allowed to use it. Said R. Ami: It was allowed as a found article in a crowded place, in accordance with R. Simeon b. Elazar; and also as a legal slaughter in accordance with R. Hananiah b. R. Jose the Galilean of the following Boraitha: If one has lost his goats or hens, and thereafter he found them slaughtered, R. Jehudah prohibited their use, and R. Hananiah b. R. Jose the Galilean allowed it. Said Rabbi: It seems that the opinion of R. Jehudah is correct when he found it in rubbish, and the opinion of R. Hananiah is correct when he found it in a house. Infer from all this that if one finds an article in a crowded place it is his, even when the majority of the inhabitants are Israelites. Said Rabha: Such meat may be used even when the majority of the inhabitants are heathen, but the majority of the butchers are Israelites. R. Ami found slaughtered pigeons on the way from Tiberias to Ziporus, and he questioned R. Assi, according to others R.

Johanan, and according to still others he questioned the college, and was told to keep it for himself. R. Itzhak of Naph'ha found a ball of cord, of which nets were made, and he came before R. Johanan or in the college, and was told to keep it for himself.

MISHNA *II.*: The following articles he must proclaim: When he found a vessel containing fruit or an empty one, money in a purse or an empty one, heaps of fruit or heaps of money, or even three coins which were one upon another, sheaves in private ground and bread made in a household, and shorn wool which looks as if it was already in the hand of a master, pitchers of wine or oil, all these he must proclaim.

GEMARA: The Mishna treats of a case when the fruit was found *in* the vessel, and the money *in* the purse; but how is it if the vessel was empty and fruit was scattered near by, or the purse was empty and the money was near it? It would be his without any proclamation, and the rabbis taught the same plainly in a Boraitha, with the addition that if a part of it was in the vessel or in the purse, and another part on the ground near by, he must proclaim. Does this not contradict the following: If one has found an article which has no mark, near an article which has a mark, he must proclaim; and if the owner comes declaring the mark, and takes the article, he is also entitled to the other one which was without a mark (hence the vessel and the fruit in question should be proclaimed)? Said R. Zbid: This presents no difficulty. The Boraitha which states it is his treats of, *e.g.*, an empty vat and near it flax (it is not to be supposed that the flax fell out of the vat, as some would remain there, and the same is the case with an empty purse and money near it), and the Boraitha which states it should be proclaimed treats of an empty basket, and fruit which is supposed to have fallen out of the basket. R. Papa, however, maintains that both Boraithas may treat of a basket and fruit, but one speaks of a case where some was left in the basket, and the other one treats when it was entirely empty; and if you wish, it may be said that both treat of a case when nothing was left, but in one case the face of the vessel was turned toward the fruit, and in the other case the vessel was with a rim (so if the fruit which was found near it would fall from the vessel, some of it would remain there because of the rim).

"*Heaps of fruit*," etc. Infer from this that the number is a mark? Perhaps the plurality stated in the Mishna is not

correct, as it ought to be singular. If so, infer from it that "place" is a mark? Perhaps the plurality *is* correct.*

"*Three coins one upon the other*," etc. Said R. Itzhak of Magdahl:† Only when they were like a steeple. The same we have learned in the following Boraitha: If one found scattered coins, they are his; if, however, they were lying in a steeple-like manner, he must proclaim. And what is to be understood as steeple-like manner? Where three coins were lying one upon another.

Does not the Boraitha contradict itself? It begins "scattered money," of which it is to be inferred that if it was not entirely scattered, but in the condition where a part overlapped another, and the other part was on the ground, it must be proclaimed; and immediately after it states that it was in a steeple-like manner, etc., of which it is to be inferred that if they were not so but overlapped, it is his? The Tana is of the opinion that if they were not placed in a steeple-like manner it is considered scattered.

Said R. Hanina: "The case in question speaks of coins of three different rulers; but if they were of the very same ruler, they are his." How is this to be understood? If they were placed in a steeple-like manner, he must certainly proclaim, no matter of what ruler they are; and if scattered, even if they are from three rulers; what is it? Therefore if the statement was made by R. Hanina, it is as follows: The case is only when the three coins were placed as if they were of three rulers: viz., the larger one at the bottom, the middle one, which was a little smaller, upon it, and the third, a still smaller one, on the top, which indicates that some one placed it so intentionally; but if the coins were of one ruler and of one kind, that all were alike, even if they were one upon the other, it is his, as it may happen that they were lost by the owner in such a manner. R. Johanan, however, is of the opinion that even if they were from one ruler he must proclaim.

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* Such a discussion or question and answer occurs very seldom, if this be not the only one, in the whole Talmud, and it shows that the sages of the Gemara were doubtful whether the Mishna was transmitted to them correctly; in other words, they did not know exactly whether the paragraph submitted to them was a correct translation from the original. Mark this.

† The literal translation of the word "Magdahl" is steeple, or turret; and Itzhak of Magdahl means the Itzhak who delivered the Halakha of Magdahl. See Hacha'h-lutz by Schur, in the chapter where he discusses about the names of the Tanaim and Amouraim, who were named according to the Halakha they taught.

What shall he proclaim? If the number, why then three; even two should be the same. Said Rabbina: He proclaims the kind of coin. R. Ashi questioned: If they were placed like the stones of *Markullus* (an idol of ancient times which was worshipped by putting stones one upon the other), what is the law? Come and hear. There is a Boraitha: Scattered money, it is his; however, like the stones of Kullis, he must proclaim. And how were the above stones placed? Two on either side and one on top of both. The rabbis taught: If one finds a sala in the market, and his neighbor claims it is his, giving a mark that it is new, it is a coin of Nero or of another ruler, he says nothing; and even if he says my name is written upon it, it counts for nothing, because on a coin no mark is to be considered, as he may nevertheless have given it away to some one and it was lost by the latter.

MISHNA *III.*: If one found under a wooden wall, or a brick one, pigeons tied one to the other, or if they were placed on a thoroughfare of a private field, he must not touch them. The same is the case with a covered vessel found in rubbish; if, however, it was uncovered, he may take it and proclaim.

GEMARA: Why shall it not be touched? Because it may be that some one has hid it, but it has no mark on it (so if it would be taken away he could not regain it), therefore it must be left until the owner will come and take it. But why should not the tying be a distinguishing mark? Said R. Abba b. Zabda in the name of Rabh: It means that they were tied, as usually, at the wings, but let then the place be a mark. Said R. Uqba bar Hama: When they were jumping; if jumping, then it may be that they were coming from some other place, and should be allowed. Yea, it may be so, and it may be also that one hid them purposely, and in such a doubtful case R. Abba b. Zabda declared, in the name of Rabh, that it should not be taken from the very first; but if one nevertheless took it, he is not to be compelled to return it.

"*If he found a covered vessel,*" etc. This contradicts the following: If he found a vessel hidden in rubbish, he may take it and proclaim, because usually the rubbish will be removed and some one else may take possession of the vessel (hence you see that he may take it, and our Mishna states it shall not be touched?). Said R. Zbid: This presents no difficulty. The Mishna treats of Kuva and Goblets, and the Boraitha treats of small knives and double-pronged zincked forks which were mixed

unintentionally with the rubbish. R. Papa, however, says: In both, goblets were meant, but the Mishna treats of rubbish which is not to be removed, and the Boraitha of that which is to be; but if it is to be removed, the article which is there was certainly put there intentionally (it means that the owner does not intend to make use of it any more), therefore we must say that the rubbish in question was of a kind which is not to be removed, but afterwards it was decided that it should be. According to R. Papa's theory it is correct what the Boraitha adds, "as usually rubbish will be removed," but according to R. Zbid's theory, how is this additional expression to be understood? Read "as usually small vessels are thrown away with rubbish."

MISHNA *IV.*: If one found anything in a heap of rubbish or in an old brick wall, it is his; if, however, in a new wall, in the outer part, it is his; if in the inner part, it belongs to the owner. If, however, the house was rented, if even he found it in the *house* it is his.

GEMARA: It was learned that the reason was that the finder may say, that this article was hidden by the Amorites. But only the Amorites hide things, and the Israelites not? It means when the vessel seemed to be antique.

"*If it was a new one*," etc. Said R. Ashi: If the article was a knife, and the handle was from the outside, it is supposed it was placed there by some stranger; and if it was from the inside, it is to be supposed that it was put there by the owner of the house. The same is the case with a purse: it must be investigated whether the opening of the purse is outside or inside. If so, why does our Mishna state, "if from the outside it is his," without any distinction whether the handle or the opening of the purse was placed outside or inside? Our Mishna treats of round or roundish articles, which on all sides are alike. There is a Boraitha in addition to it, that if the articles were found on both sides, they are to be divided between the finder and the owner.

"*If it was rented*," etc. Why so? Let us see who was the last tenant. Said Resh Lakish in the name of Bar Kapara: It speaks of a case when it was rented to three men. Infer from this that the Halakha prevails in accordance with R. Simeon b. R. Elazar stated above, page 51. Therefore, said R. Menashia bar Jacob, it speaks when it was an inn with three heathen. R. Na'hman in the name of Rabba b. Abuhu, how-

ever, said: "There is no difference who the guests were, even Israelites, if one of them lost something, he may say, 'There were no others, but my two neighbors. If they found it they would return it to me, as I had mentioned several times to them that such a thing was lost by me; and when they did not return it, it indicates that they would steal it, and there is no use arguing with them.'" (Consequently he renounced his hope of regaining it.) And R. Na'hman said, in accordance with his theory elsewhere, as follows: "If one has seen that a sala was dropped by one of two who were standing there (but he does not know to which of the two it must be returned). Why so? Because only two of them occupied the place, and the loser will think, 'As there was no other besides my neighbor, I will tell him, Only you could have found it, and you must return.' But if there were two others besides him, the finder of the sala may keep it for himself, as the loser would think, 'My sala is lost at any rate. If I claim it of one of my neighbors he would deny, and so, too, would say the other one' (consequently the hope of regaining is renounced)." Said Rabha: "If there were three, he must not return it only in case the coin has not the value of one *perutha;* but if it has the value of two *peruthas*, he must return. Why so? Perhaps they are partners, and one of them relinquishes his share to the other without renouncing any hope." The same said again: "If one has seen a sala dropped, and he took it before the owner renounced his hope, with the intention to rob it, he transgresses the three following commandments: [Lev. xix. 13] 'Nor rob him,' [Deut. xxii. 1] 'Thou shalt surely bring them back again,' etc., and [ibid., ibid. 3] 'Thou art not at liberty to withdraw thyself'; and even if reconsidering, he returned it, it is considered a gift; the transgression, however, remains. If, however, he took it with the intention of returning it, and after the owner renounced his hope he reconsidered to rob it, he transgresses the second commandment mentioned above. But if he was waiting until the owner renounced his hope, and then took it, he transgresses only the commandment of the last verse stated above." He said again: "If one has seen money dropped in sand, and afterwards found and took it, he is not obliged to return it, although the loser sifted the sand; for it may be supposed that the purpose of sifting the sand was because he thought, as it happened to me it also may happen to some one else, and perhaps I might find, if not mine, something of another loser."

MISHNA *V.*: If one found something in a store, it is his; if, however, between the counter and the storekeeper, it belongs to the latter; if before a money changer, it is his; if, however, between the chair where he usually sits and the table, it belongs to the money changer; if one has bought fruit or one sent him such, and he found money in it, it is his; if, however, he found it tied in a package he may take it, but proclaim.

GEMARA: Said R. Elazar: "Not only on the ground before the money changer, but even if he found it on the table, it is his." Whence did the same get such a law? Said Rabha: "From the expression of the Mishna, 'between the chair and the table,' etc.; let it state even on the table, or if he finds *in* the table, as it states in the first part. If he found in the store? Infer from this that even the money was on the table (and the money changer being absent), it is his (as it may be supposed some one else forgot it, as the money changer is usually very careful)."

"*If one has bought fruit*," etc. Said Resh Lakish in the name of R. Janai: "It treats of a case where he bought of a merchant, but if of a private person, he must return; and so also taught a scholar in the presence of R. Na'hman. Said the latter to him: Did, then, the private person thresh it himself (though the expression in the Mishna is *fruit* it means also *grain*)? and the former answered, Then ignore the Boraitha. Rejoined R. Na'hman: It is not necessary to ignore it, as it could be explained that the case was where the owner threshed it by means of his male or female heathen slave (and if even they lost the money in question, it belongs nevertheless to the owner)."

MISHNA *VI.*: A garment is also included (in the verses concerning lost articles). Why, then, is it mentioned separately? To teach that all other articles should be equal to it; as a garment usually has marks and claimants, so also any article which has marks and claimants, he must proclaim.

GEMARA: In what verse is it included? Said Rabha: "In [Deut. xxii. 3] 'With *every* lost thing.'" He said again: "To what purpose does the Scripture mention ox, ass, sheep, and a garment separately? (Is it not included in the cited verse above?) They are all needed, for if the Scripture would mention the garment only, one might say that it must be returned when witnesses testify that it belongs to the claimant, or when the claimant gives the mark which is on the material of it; but

if, *e.g.*, an ass, and witnesses or marks can be given of the saddle only, the ass is not to be returned; therefore ass is mentioned, and ox was also necessary to signify that a mark indicating that its tail was cut was sufficient, and the same is with sheep, that the mark, the wool shorn, suffices. But would it not be sufficient if the ox only, without the sheep, were mentioned, as it would be self-evident that the wool of sheep which was shorn is a sufficient sign for returning, as the same is the case with an ox with its tail cut? The answer to this (see Baba Kama, p. 127, the quotation *if an ox fall in* at the end).

The rabbis taught: It is written [ibid., ibid.], "Which may be lost to him," means to exclude a loss which has not the value of a *perutha*. R. Jehudah, however, says: "The words further on, 'which thou hast found,' signify this."

The schoolmen propounded a question: The returning, according to marks given, is biblically or rabbinically. What is the difference? Regarding the returning of a written divorce, by proclaiming the marks on it, if it is biblically, it must certainly be returned; if, however, rabbinically, it may be said that the sages made their enactment concerning money matters, but not concerning a biblical prohibition (for if an error would occur in such a case, a married woman would be allowed to marry again). Shall we assume that the Tanaim of the following Boraitha differ in that case; namely, testimony of witnesses must not be accepted on suppositions (*e.g.*, if witnesses came to testify that they suppose, by seeing the body of so and so, that he was killed, unless they testify that they had seen his face and his nose attached). Elazar b. Mahbai, however, said: "It may." Should we not assume that the point of their difference is that the first Tana holds that signs are rabbinical, and Elazar holds that they are biblical? Said Rabha: "All agree that signs are biblical, and the point in which they differ is, one holds that the suppositions of such a case by his comrade may be relied upon, and one holds it may not (because an error may occur also in a case of a comrade)." He said again: "The fact that we return lost articles according to signs given, proves that it is biblically; for if not, how could the sages make such an enactment in a case of doubtful money? Should we assume that the finder is pleased to return the article according to signs, only because if it should happen that he himself lost an article, the same would be done to him?" Said R. Saphra to him: "What do we care for the pleasure of the finder, when the loser

is not pleased (*e.g.*, the man who claims and gives signs, and yet it is not the real ones)? Is it, then, usual that one should desire to do good to himself *in futuro* (which it is doubtful if it will happen) with money which does not belong to him?" Therefore said Rabha:* "All the losers would be pleased by giving signs that the articles should be returned to them, as they know that witnesses are not always to be found; and, on the other hand, the signs on the articles are not known to every one who would like to claim them, and only the loser, who knows the exact mark, will proclaim them and come in possession thereof" (and therefore it is possible that such an enactment was made by the sages, and it is not biblically). Finally said Rabha: "That the marks in question are biblically is to be deduced from the following verse [Deut. xxii. 2]: 'And it shall remain with thee until thy brother inquire after it.' Could, then, one bear in mind that it should be returned before it is inquired about? We must, therefore, say that the inquirer must be examined whether he is not a swindler, and by what means he can be identified if not by the exact marks; hence infer from this that they are biblically." He says again: "If it is your decision that the marks in question are biblically." "[If it is your decision." Did not Rabha just deduce it from a verse? Yea, but still one can say that the examination mentioned above should be by means of witnesses.] If there were two persons who gave the very same marks, it must be reserved (until proper evidence is brought); if there were marks and witnesses contradicting each other, the witnesses have the preference. If there were marks and marks from two parties, and there was a third one who brought one witness, the third one must not be taken in consideration, and the article must be kept in reserve. If there were witnesses testifying that the ownership of the article by this man was when it was woven, and other witnesses the ownership of another man when it was lost, the latter has the preference, as it may be that the first one sold it and it was lost by the buyer. If one party testifies to the length, and another

* In the text it is not mentioned that Rabha is the author of this phrase, but it is the continuation of R. Saphra. Rashi, however, has corrected Rabha, for a reason which is not known to us; we see, however, some more corrections of Rashi, in this so complicated a discussion; and notwithstanding this, it is very difficult to find out the real meaning of it. We have tried to make it in some way understood to the teader; still we are not sure whether it is correct, and would be very glad if some one should translate 't in a better way; to omit this all, would be against our method.

party to the width, the length has preference, as the width can be assumed by seeing the article when it was used. If one testifies to the length and the width, and another one testifies to the square, the former has the preference; the square and the weight, the latter has the preference. If the husband claims that the written divorce was dropped by him before it was delivered to his wife, and proclaims certain marks, and she claims it was dropped by her after she received it (consequently she is single and can marry), she has the preference (because if she had not received it, how could she know the marks?). However, the marks must be not in length and width, as she could see it before it was given to her, but a mark such as a hole in such and such letter of it. If the marks were the very same given by him and her concerning the length of the thread upon which the divorce was put, she has the preference. If both claim that it was in the *χαψα* (a kind of small case), he has the preference, because it is well known to her that the entire contents of it he has placed there.

MISHNA *VII.*: Until what time is he obliged to proclaim? Until his neighbors are aware of it; so is the decree of R. Meier. R. Jehudah, however, says: "All the three festivals (Passover, Pentecost, and Tabernacles), and after the latest festival seven days, that the loser should be able to go home three days and return three days, and one day for the proclaiming of his loss.

GEMARA: A Boraitha in addition to the Mishna, which states "the neighbors of the lost article." How is it to be understood? Does it mean that the neighbors knew who lost the article? Let them go and return. Therefore it must be said that it means the neighbors of the place where the lost thing was found.

"*R. Jehudah said*," etc. There is a contradiction in the following: On the third of Mar Cheshvan they pray for rain. R. Gamaliel said: "On the seventh of it, which is the fifteenth after the festival, for the purpose that the last of the inhabitants of Palestine shall have reached Euphrates."

(Hence we see that *seven* days were needed for each tour.) Said R. Joseph: "This presents no difficulty. The cited Boraitha speaks of the first temple, of which it is written [I Kings, iv.]: 'Judah and Israel were numerous as the sand which is by the sea in multitude,' then fifteen days were needed; in the second temple, however, of which it is written [Ezra, ii. 64]: '*The* whole congregation together was forty and two thousand

three hundred and sixty,' etc., seven days are sufficient." Said Abayi to him: "Is it not written [Nehemiah, vii. 73]: 'So the priests and the Levites,' etc., and also [Ezra, ii. 70]: 'And the singers and the gatekeepers . . . in their cities'? and as it was so, the reverse of your theory should be held. In the first temple, then the people were very numerous, and caravans were going to and fro, day and night; not so much time was necessary as in the second temple, when caravans were not so frequently travelling and not in night-time." Said Rabha: "There is no difference between the first and second temple concerning a lost thing. The rabbis did not like to cause too much trouble to any one." Said Rabbina: "Infer from this that the finder must proclaim the kind of the garment he has found, for if he has only to proclaim a lost article, one day would be added to the loser for searching for his garments, to see what was missing. Infer from this that so it is." Rabha, however, says: "Nothing is to be inferred from this. The rabbi did not like to cause too much trouble, as stated above." The rabbis taught: "The first festival, the proclaimer must say: This is the first feast for my proclamation, and on the second he must say this is the second, and on the third he need say nothing (and this will mark that it is the third time)." The rabbis taught: "Formerly each finder used to proclaim on all three festivals, etc., as stated above; however, since the destruction of the Temple [which we hope will be rebuilt soon in our days], the sages enacted that it shall be proclaimed in the synagogues and houses of learning, and since oppressors have increased, it was ordered that the finder should notify his neighbors and friend, and he is quit." What is to be understood by the expression "oppressors"? They who claim that all lost articles belong to the government.

R. Ami happened to find a purse with dinars in the presence of a Roman, and he was afraid to take it. The Roman, however, said to him, You may take it for yourself; we are not Persians, who say that a lost article belongs to the government. The rabbis taught: "A certain stone was in Jerusalem, and every one who had lost anything would go there, and the same did the finders. The one used to proclaim, and the loser would give the marks of the article lost, and if correct, he took it; and this is what we have learned in Tract Taanith concerning Chouna, who said, Go and see if the certain stone is covered by rain.

MISHNA *VIII.*: If one identifies the article, but not its marks, it must not be delivered to him; and if the claimant is known to be a swindler, even if he gives marks, as it is written [Deut. xxii. 2], "until thy brother inquire after it," which means until you shall investigate whether he is thy brother or a swindler.

GEMARA: It was taught: R. Jehudah said: An article, but not the kind of it, must be proclaimed, as swindle is to be feared. R. Na'hman, however, said: He proclaims also the kind of article, for if swindle is to be feared, there will be no end of the matter. An objection was raised from our Mishna, which states, "if he identifies the article without its marks," etc.; this would be correct if an article but not the kind is proclaimed. Then the Mishna comes to teach that even if he identified the article, it must nevertheless not be delivered until he gives the marks; but if, as you say, he proclaims the kind of article, is it not self-evident that without given marks it would not be returned? Said R. Saphra: "It may be said that he proclaims the kind of article, and the claimant gives marks, but not the essential marks, it is not to be returned, and the Mishna with the expression 'marks' means the essential ones."

"*And he who is known as a swindler*," etc. The rabbis taught: Formerly, if one lost an article he would give the marks and it was delivered to him. But since swindlers have increased, it was enacted that the claimant was obliged to bring witnesses that he was not a swindler; as it happened with the father of R. Papa, who lost an ass and thereafter found it at some one's place. When the case came before Rabba bar Huna, he said to him, Bring witnesses that you are not a swindler; and he did so, and Rabba questioned them: Do you know that this man is a swindler? And he answered: Yea. Said the claimant: *I* am a swindler? The witnesses rejoined: We meant to say you are not, and Rabba decided that it be returned, because one would not bring witnesses who would testify against him.

MISHNA *IX.*: If the found article is of such a kind that it labors for its food, it shall be fed and labored with; and if of such a kind which does not labor and must be fed, it shall be sold, as it is written [ibid., ibid.]: "And then thou shalt restore it," which means, deliberate how the restoration should be made. But what shall be done with the money? According to R. Tarphon he may use it, and therefore if he loses it, he is responsible. According to R. Aqiba, however, it must not be used, and therefore if it is lost, he is not responsible.

GEMARA: (The Mishna does not state any definite time.) Is it for eternity? Said R. Na'hman in the name of Samuel: "It means until twelve months have elapsed. We have learned the same in the following Boraitha: Each article which is subject to labor for its food, as, *e.g.*, a cow or an ass, he may keep it until twelve months have elapsed, and when this time has passed it may be appraised and the value of it deposited. Calves and colts he may keep three months, geese and hens thirty days, and after this time has elapsed it should be appraised," etc. R. Na'hman bar Itzhak, however, says: "A hen (which lays eggs) should be kept twelve months (as it is equal to a cow which labors for its food), and the same is plainly stated in a Boraitha."

"*And if of such a kind which does not labor,*" etc. The rabbis taught: "It is written: 'Thou shalt restore it to him,' which means you must see that the restoration is made; viz., if you have found several calves, colts, geese, or hens, you must not sell one of them for the purpose of feeding the remainder (for if so, it can happen that all of them should be sold for their food), but sell all at once and deposit the money."

"*But what shall be done with the money,*" etc. We see that the sages mentioned in the Mishna differ only in case where the money was used, but if it was not, and it was lost, all agree that he is free. Shall we assume that our Mishna is an objection to R. Joseph's statement, who said (Baba Kama, p. 134): "That the bailee of a lost thing is equal to a bailee for hire"? R. Joseph may say that when the article was stolen or lost (by carelessness), all agree that he is responsible, and the point of their difference is, it was lost through an accident for which only a borrower is responsible. According to R. Tarphon, who permits the money to be used, he is considered a borrower, and is responsible; and according to R. Aqiba, who does not permit the use of it, he is not considered a borrower, and therefore not responsible for an accident. If so, to what purpose does R. Aqiba use the expression "therefore"? He did it because R. Tarphon used the same expression, and with him it was necessary, as he meant to teach thus: As the use of the money was permitted, although he did not, he is nevertheless responsible, because he is considered a borrower. But does not R. Tarphon say it was lost, which means even if not accidentally? As Rabba said elsewhere: "That where the expression 'it was stolen' occurs, it means by an armed robber; and where the

expression 'lost' occurs, it means accidentally, as, *e.g.*, the ship sunk in the sea, so also is to be explained here." Said R. Jehudah in the name of Samuel: "The Halakha prevails in accordance with R. Tarphon. Bid Ra'hba was in the possession of money belonging to orphans, and he questioned R. Joseph whether he may use it, and he answered: "So R. Jehudah declared in the name of Samuel, that the Halakha prevails in accordance with R. Tarphon." Said Abayi to him: "But was it not taught in addition: R. Helba in the name of R. Huna said that the case holds only with money obtained for a found article, he may use it for his trouble; but if the money was found, of which he had no trouble, it must not be used; and this money of the orphans which is in possession of the questioner came to him without any trouble?" R. Joseph said to the questioner: "Go, people do not allow I shall permit you." *

MISHNA *X.*: If one found books, then he may read them once within thirty days; if he is unable to read, then he must unroll them once in thirty days (to air them). He is, however, not allowed to study in them for the first time; and, furthermore, no other one shall assist him. If the article was a garment, it must be shaken once within thirty days, and he may spread it out for its own sake, but not for his honor. Vessels of silver and copper may be used if for the sake of the articles, but not so often that they may become worn. If, however, the utensils are of gold or of glass, they must not be touched until Elijah will come. If, however, the article found was unfit for the finder to carry, he may leave it.

GEMARA: Samuel said: "He who finds Tephilin (Phylacterien) in market, he may appraise their value and use them immediately." Rabbina objected from our Mishna: "If one found books, . . . he may unroll," etc.; hence it is *not* mentioned that he may appraise and use them. Said Abayi: "With Tephilin it is different, as they are always to be found for sale at the scribe's, as, *e.g.*, Bar Habu; written books, however, are very seldom articles which can be bought." The rabbis taught: "One who borrows the Holy Scrolls of his neighbor, must not lend them to another; he may open and

* Luria (Rashall) in his remarks says: "I have not found in any commentary an explanation why money belonging to orphans should be equal to found money, that the decision of R. Tarphon should apply also to it. It seems to me, therefore, that the case was where he found the money, and thereafter it was known to belong to orphans not yet of age, which should be returned to them."

read in them provided he does not begin to study in them for the first time, and also he must not invite another to study with him. The same is the case if one deposits Holy Scrolls at his neighbor's: the bailee must unroll them (for airing) once in twelve months, and in the meantime he may read in them; he must not, however, open them for the purpose of reading only." Symmachus, however, says: "If they were new ones, he may air them once in a month; and if old, once in twelve months." R. Elazar b. Jacob says: "It makes no difference, once in twelve is sufficient."

The master said: "He must not lend them to another." Does this law apply only to Holy Scrolls? Is it not the same with anything else? Did not Resh Lakish say (in regard to a Mishna in Tract Gittin): Here taught Rabbi that a borrower must not lend an article to another, and the same is the case with a hirer? Lest one say that usually one is pleased that a meritorious deed be done with his property, he comes to teach us that he must not do so, even with the Holy Scrolls without permission. To what purpose, then, does the master teach, He opens them, etc.? Is this not self-evident, as for this purpose they were borrowed? Because he means to tell that he must not begin his study for the first time, etc., he mentioned also the above.* But how is to understand the latter part? R. Elazar b. Jacob says: "Once in twelve." Is it not the same as the first Tana said? Read, R. Elazar b. Jacob said in both cases they must be unrolled once in thirty days.

"*To study in them,*" etc. There is a contradiction in the following: "One shall not read a paragraph and repeat it or translate it into another language; he must not open more than three folios of them, and three men must not read in one and the same volume." Is it not to be understood from this that three must not, but two may? Said Abayi: "This presents no difficulty. In one and the same paragraph even two are not allowed, but in two different paragraphs each of them may read separately."

"*If the article was a garment,*" etc. Is it, then, good for the garment to shake it frequently? Did not R. Johanan say that whoever has a specialist weaver in his house (who may weave for him new garments), may shake his garments every day; hence we see that frequent shaking spoils the garment?

* The text here discusses the bailee of Holy Scrolls and finally explains it as we have just translated; therefore the omission.

Yea. Every day it would spoil it, but once in thirty days is good for it; and if you wish, it may be said that R. Johanan treats of a woollen garment (which can be torn by shaking), and the Mishna treats of linen ones.

R. Johanan said:* "It is better to drink a goblet from the hand of a witch than to drink a goblet of lukewarm water when the goblet is of metal, and was not boiled previously, and it is ordinary water without any spices in it." He also said: "He to whom his father bequeathed too much money, and he desires to lose it, shall dress himself in Roman linen garments (which are very dear and are spoiled in a short time), and shall use glass utensils of great value, and shall hire others to do the work necessary in his vineyards while he is absent."

"*Vessels of silver and copper*," etc. The rabbis taught: "If one finds wooden vessels, he may use them in order that they may not decay. Copper ones he may use for warm liquids, but not put them on the fire, because the vessels may be worn off; silver ones he may use for cold liquids, but not for warm, for they may lose their brightness; spades or axes he may use for soft materials, but not for hard, for they may be diminished; however, golden ones or glass ones must not be touched until Elijah will come. The same law applies also to deposited articles. If so, to what purpose was it deposited? Said R. Ada b. Hama in the name of R. Shesheth: "It was deposited for saving only, as, *e.g.*, the owners had departed for the sea-countries."

"*If, however, the article found, . . . he may leave it.*" Whence do we deduce it? From that which the rabbis taught: "It is written [Deut. xxii. 1]: 'And withdraw thyself from them,' which means that there are cases in which you may withdraw, and others in which you may not. How so? If, *e.g.*, he was a priest, and the found article was on a cemetery, or he was a sage, and it is not fit for him to carry the found article, or if his labor at that time should have more value than the value of the found article, he may leave it, as in such cases the verse cited above applies." Let us see in what case the above verse is needed. If to a priest who saw a found article in a cemetery, is then a verse needed? Is it not self-evident, as there is a negative and positive commandment concerning a priest, who must not defile himself by the dead [Lev. xxi. 1],

* Because it is stated here what R. Johnanan said regarding worldly affairs, it mentions here the other things he said in the same matter. (Rashi.)

and the positive commandment, "Ye shall be holy" [ibid. xix. 2], and to return a lost thing is one positive commandment only; and aside from this it must not be ignored, a bodily prohibition for money matter even if it is meritorious, and if the above-cited verse is needed, because his loss of time has more value than the lost article. This is also inferred from the saying of R. Jehudah in the name of Rabh, as follows: "It is written [Deut. xv. 4]: 'There shall be no needy man among thee,' * which signifies that yours has preference over that of another; it must therefore be said that the verse in question is needed for the case of a sage, for whom the found article is unfit for his honor." Rabba said: "If he has seen an animal, and struck it (and it ran away), he must return it." It happened that Abayi was sitting in the presence of Rabba, and goats came near him, and he took a clot of dirt and threw it at them, and they ran away. Said Rabba to him: "If they will be lost you will be responsible; go and bring them back to the owner."

The schoolmen propounded a question: If the man is so respected that in the city it is not nice for him to drive cattle, but in the field he usually does so, what is the law? If he has seen his neighbor's cattle astray in the field, must he return them to the city only, or, as the Scripture requires that they shall be returned to their proper place, and as it is not fit for him to lead them in the city, he need not do so even in the field? On the other hand, it may be said because it is fit for him to do it in the field, it is his duty to lead them to the city, and when it is already there return them to the proper place. This question remains unanswered. Rabha said: "(This is the rule.) If it would be his own article, he would trouble himself to put it in the proper place; then he must do the same with that of others. The same is the case with loading and unloading a wagon. If he is accustomed to do so for himself, he must do so for another if he is in need [Ex. xxiii. 5]."

R. Ismail b. Jose was on the road, and met a man carrying a bundle of wood, who put it down to take a rest; thereafter he asked R. Ismail to help him lift it on his shoulder, and he asked him the value of it, and the man answered a half zuz. R. Ismail then bought it for a half zuz, and renounced his ownership to it. The man, however, had acquired title to it by drawing it. Then R. Ismail bought it from him again by adding

* The Scripture reads *Bekha*, which means literally *in thyself;* hence the significance of the text. Leeser, however, translates *among*, according to the sense.

another half zuz, and renounced his ownership again. When he had seen that the man intended to draw it again to acquire title again, he said: "I have released my ownership for the whole world, but not for you." And was not R. Ismail a sage for whom it was not fit to do such a thing? He was acting to moderate the law, as R. Joseph taught: It is written [Ex. xviii. 20]: "And thou shalt make them know," etc. "To make them know" means how to make a living; "the way" means bestowing of favors; "wherein they must walk" signifies to visit the sick and bury the dead; "and the work" means the exact law; "they must do" means to moderate the law. The master says: Wherein they must walk to visit the sick. Is this not included in bestowing of favors? It was necessary to name this separately, in case when the sick one was his comrade, and the master says elsewhere that by visiting a sick one, if he is his comrade, a sixtieth part of the sickness goes over to him, and notwithstanding this he must do so. But is not the burying of the dead included in bestowing of favors? It was necessary to teach that even if he was a sage, and it is beyond his dignity, he must nevertheless do so in such a case. "To moderate the law," as R. Johanan said that Jerusalem was destroyed because they used the exact law only and never moderated it.

MISHNA *XI.*: What is to be considered a lost thing? *E.g.*, if he found an ass or a cow feeding in a public thoroughfare, it is not to be considered a loss. If, however, the packing material of the ass was turned over wrongly, or the cow was running between the vineyards, it is to be considered a loss which must be returned. If he has returned it, and it runs away again, even four or five times, he must return it, as it is written [Deut. xxii. 1]: "Thou shalt surely bring them back." If his loss of time was worth a sala, he must not say, Give me a sala, but he may take the reward as a laborer would usually take for such work. If there were three persons (who constitute a Beth Din of common men), he may make the condition before them (my loss of time in this case is worth so and so much, and I will collect from the owner); but if there were not such three persons, before whom could he make such a condition? Hence his own time has preference.

GEMARA: How is the first part of the Mishna to be understood, which states it is not to be considered a loss when it were lost to the owner? Why not? Said R. Jehudah: It means to

say, what the rule of a lost thing is which one is obliged to trouble himself. If the articles mentioned were fed in a public thoroughfare, it is not considered such that the finder need trouble himself, unless he finds them in such condition as mentioned in the Mishna further on. But how is the second part to be understood, which states it is to be considered a loss, etc.? Does it mean for eternity? Said R. Jehudah, in the name of Rabh: "If he has seen them three days in succession at the same place." How was the case, if in night-time even one hour is sufficient, and if in the daytime even more than three days should not be considered? The Mishna treats of a case where he had seen them in the morning or at sunset; if only three days in succession, it may be supposed that it is only mishap, and they will come out soon; but if more, it is certainly a lost thing. We have learned the same in the following Boraitha: "If one found a garment or an ox in the market, or a cow running in the vineyard, it is considered a loss; but if the articles mentioned were lying on the side of a partition, or the cow was fed between the vineyards, it is not considered a loss, unless he has seen them three days in succession. If one has seen that his neighbor's field is about to be overflowed, he may prevent it if it is within his power." Rabha said: "It is written [Deut. xxii. 3]: 'With every lost thing,' it means to add a loss of real estate." Said R. Hananiah to him: "The following Boraitha should support you: If he has seen water going to overflow, he may prevent it by making a dam." And Rabha answered: "This teaching may not support me, as it may be that it treats of a case when there were sheaves in the field (hence it is not real estate). If it is so, what does the Boraitha teach us? Is it not included in the verse cited above? It may be said that there were sheaves which were still attached to the ground, and the use of the ground was yet necessary. Lest one say because they still need the support of the earth, it should be considered as the earth itself, it comes to teach us that this is not so."

"*If he returned it, and it runs away again*," etc. Said one of the scholars to Rabha: "Why so? The Scripture reads *Hoshéb* (which means, 'thou shalt return'), once, and then *Thi̇sbibém* ('thou shalt return them'), twice." And Rabha answered: "The first word means even hundred times, and the second word is needed lest one say that he is only obliged to return to his house, but not to his garden or ruined building,

hence the second word *Thisbibém.*" * How was the case? If the article would be saved in the garden or ruins, then it is self-evident that he must return it, and if it was not saved there, why should he return? It may be said that it is to be saved there, and it comes to teach us that the knowledge of the owner is not necessary, and this is in accordance with R. Elazar, who said, in everything between man and man, the knowledge of the owner is needed, except concerning the return of a lost thing, in which the knowledge of the owner is not needed (*i.e.*, he may put the found article on the owner's property, where it may be saved without notifying him that he has done so), and this is deduced from the superfluous word in the Scripture mentioned above. The same is the case with the word [ibid., ibid. 7] which also reads *Shalach Téishalach* (literally, "sending, thou shalt send"). "I would say Shalach once, Téishalach twice," (said the above scholar to Rabha, and he answered:) "Shalach means even hundred times, and Téishalach signifies that even if the mother was needed for a meritorious purpose (*e.g.*, to cleanse a leper [Lev. xiv. 4]), it must be, nevertheless, sent away." The same scholar said again to him: "It is written [Lev. x. 17]: *Hakhéach Toucheach* (literally, 'rebuke, thou shalt rebuke'); say the first word means one, and the second two." And Rabha answered: "The first word means even hundred times, and the second means that not only the master must rebuke his pupil (when seeing him acting wrong), but even the pupil must do so to his master. The same is the case with the word [Ex. xxiii. 5] *Ozob Tahsob* (literally, 'help, thou shalt help'), which means you must give your assistance, even not in the presence of the owner; and the same means the word [Deut. xxii. 4] *Hokem Tokim* (literally, 'load, thou shalt load'). But why does the Scripture repeat the same concerning unloading [Ex. xxxiii.] and loading [Deut. xxii.]? It is needed. For if it would say the first case only, one might say that because a living thing is inflicted and damages also he must assist, but in the other case of loading, in which both things do not exist, it is not so; and if it would be mentioned in the last case loading, one might say that he must do so, because he has a right to charge for his loss of time, but in unloading, which must be done gratuitously, he is not obliged, therefore both are written." [But according to R. Simeon, who holds that even load-

* Leeser translates according to the sense, Thou shalt surely return; the Talmud, however, is particular as to the words which we have translated literally in our text.

ing must be done without any compensation, what can be said? He may say that the Scripture does not indicate which verse is to be explained for loading and which for unloading. But could not the trouble about a lost article be deduced from the above-cited verses? Why is it mentioned separately? It is necessary because one might say that in both cases above there is an infliction on a living being and an infliction on the owner also (therefore the Scripture prescribes support), but concerning a lost article, in which there is an infliction on the owner only and not on the lost thing, the Scripture would not prescribe support, and the former cases also cannot be deduced from the latter one, because in this case the owner is not present (and therefore support is necessary), which is not so with the former cases, hence all of them were necessary.] The same is with the repetition of [Numb. xxxv. 17] *Moth Yoomot* (literally, "dead, he shall die"), which means that if it is impossible to kill him by the prescribed death, he may be killed in any manner; the same is with [Deut. xiii. 16] *Hahkie Thahki* (literally, "smite, thou shalt smite"), which means if you cannot smite it as prescribed, you must do so in any manner; the same is with [ibid. xxiv. 13] *Hohsheb Tohshib* (literally, "return, thou shalt return"), which means that even when the pledge was taken without permission of the court, it must nevertheless be returned; so also [Ex. xxii. 23] *Choboul Tahchboul* (literally, "pledge, thou shalt pledge"), which means the same as above [if so, to what purpose is it repeated? one for a day dress and the other for a night dress]; so it is also [Deut. xv. 8] *Pathoach Tiptahch* (literally, "open, thou shalt open"), which means that not only to the poor of your city you are obligated, but also to those of other cities; and also [ibid., ibid. 10] *Nauthon Teetén* (literally, "giving, thou shalt give"), which means both great and small gifts. The same is [ibid., ibid. 14] *Hahnék Theahnek* (literally, "donate, thou shalt donate"), which means that you must do so even if thy house was not blessed through him [but according to R. Elazar b. Azaria, who holds that if it was not blessed, he is not obliged to donate, what can be said? Nothing; but the Scripture usually speaks like a human being]. So also is with [ibid., ibid. 8*] *Ha'bêt Taabitanov* (literally, "lend, thou shalt lend"), which means that not only to him who possesses nothing and

* In all repetitions cited the Talmud takes the matter literally, though the translators, especially Leeser, whom we follow in our work, translate differently, according to the sense. Cf. Leeser's Bible.

refuses donations, but even to him who possesses but does not want to use his property for his livelihood, you must also act the same. [But according to R. Simeon, who denies any obligation upon a person of the latter case, what does the repetition signify? Nothing; the Scripture speaks as stated above.]

"*When the loss of time was the value of a sala,*" etc. How is this to be understood? Said Abayi: "The loss of time must be appraised according to his loss in his special trade."

"*If there were three men,*" etc. Issur and R. Saphra were partners in business. Subsequently R. Saphra divided in presence of two witnesses. Finally he came before Rabba bar R. Huna, and was told to bring three men, or two of them, before whom he divided the goods, or even two witnesses that he has done so in presence of other three men, and he said to him: "From what source do you take your decision?" And he rejoined: "From our Mishna, which states, 'If there were three men,' etc." Rejoined R. Saphra: "What comparison is this? The Mishna treats of collecting money from one to give it to another, and therefore a Beth Din of three men was necessary; but in my case I took that which belongs to me only. Why do not two witnesses suffice? And my theory may be supported from a Mishna elsewhere, which states that a widow may sell for her support the goods of her late husband, even not in the presence of a Beth Din (but before two witnesses)." Said Abayi to him: "But was it not taught in addition to your Mishna thus, R. Joseph bar Minyumi in the name of R. Na'hman said: It means, she does not need a court of special judges, but a Beth Din of three common men is nevertheless necessary."

MISHNA *XII.*: If he has found the animal in a stable, he is not obliged to trouble himself. In a public thoroughfare, however, he is. If it was in a cemetery (and he was a priest), he must not defile himself. If he was told by his father to defile himself, or not to return it, he must not listen to him. If he has unloaded, and reloaded, and again even four or five times, he is obliged to do so, as it is written [Ex. xxiii. 5]: "Thou shalt surely help him." * If, however, the owner went away and sat down, saying: "You are obliged by Scripture to assist me, do so if you want in my absence," he is not obliged to do anything, as it is written *Eemou* (literally, "with him"). If, however, he was old or sick, he is free. The commandment

* See foot-note p. 72.

of the Scripture is for unloading, but not loading. R. Simeon, however, maintains loading also; R. Jose the Galilean said: "If the animal was overburdened more than it could carry, there is no liability, as it is written [ibid., ibid. 5], 'under his burden,' which signifies under such a burden which it can bear."

GEMARA: Rabha said: "The stable mentioned in the Mishna means that it was of such a kind where the animal was not afraid to stay, and also was not locked in, and if it wanted to leave it could do so; and this is to be inferred from the expression, 'He is not obliged.' It is only in case it is not afraid to stay there, and from the same is also to be inferred that the stable was not locked, as if it were so, would it be necessary to teach that he is not obliged; is it not certain that when he finds it on the street, he is obliged to place it in such a stable, should he then be obliged to take it out? Hence infer that such was the case."

"*In a public thoroughfare, however, he is,*" etc. Said R. Itzhak: "It means when the thoroughfare was placed two thousand ells from the town, not otherwise, and from this is to be inferred that the stable in question, even if it was placed beyond the stated limit, there is no liability."

"*In a cemetery,*" etc. The rabbis taught: Whence do we deduce that he must not listen to his father in the above-mentioned cases? It is written [Lev. xix. 19]: "Ye shall fear every man his mother and his father, and my Sabbath ye shall keep; I am the Lord," which means that ye all are obliged to preserve my commandments (says the Gemara); but were it not written here, "and my Sabbath ye shall keep," you would say that he must listen to his father? Why? In case of a lost thing there is a positive and negative commandment (*supra*, p. 68, 69), and honoring his father is a positive commandment only, and there is a rule that one positive commandment does not contradict a case wherein are a positive and a negative commandment? It was necessary lest one say because the honor of parents is equal to the honor of Omnipotent, from an analogy of expression "honor" [Ex. xx. 12] and [Prov. iii. 9], "he shall listen to his father," (although it is against a commandment), which teach us that it is not so.

"*But not loading,*" etc. How is this to be understood? Shall we assume not loading at all? Is it not written [Deut. xxii. 4]: "Thou shalt surely help him"? Therefore we must explain that the Mishna means thus: "The commandment is

to unload without any compensation, but not loading without any." R. Simeon, however, says: "The same applies to the latter, and this explanation is as the rabbis taught plainly: 'Unloading without a compensation, and loading with.' R. Simeon, however, says: 'Both are equal.' What is the reason of the rabbis? Because, if it would be according to R. Simeon, the Scripture would be loading only, and the unloading would be deduced by drawing an *a fortiori* conclusion, as above (p. 73), and R. Simeon may answer as said above."

Rabha said: "From the decision of both we learn that a living being must not be inflicted is so biblically, as even according to R. Simeon the above *a fortiori* conclusion is not to be drawn, because in the Scripture loading or unloading is not clearly mentioned, but if it were, this *a fortiori* conclusion would be drawn; hence the infliction in question is so biblically, even in accordance with R. Simeon (for if not, how could an *a fortiori* conclusion be drawn?); but perhaps the same would be drawn not from the infliction, but from the damage; thus, in case of loading, wherein there is not any damage, he is obligated so much the more in case of unloading, wherein there is damage? Does, then, the Scripture treat only of a case wherein there is no damage? How, then, is it if, *e.g.*, when the man is going to a fair and is prevented from reaching it by some occurrence, or if in the mean time all his goods are stolen (is one not obliged to help him)? And one more support, that the infliction in question is so biblically, is to be found in the latter part. R. Jose the Galilean says: "If he was overloaded," etc., from which is to be inferred that the first Tana holds even in such a case one is obliged to help, and this only because of the infliction of the animal. But perhaps they (first Tana, R. Jose) differ only in that verse from which R. Jose deduces his decision, and the rabbis do not care to deduce it (not because the infliction in question is biblically); furthermore, it may be deduced that it is not so biblically from the first part, which states that in absence of the owner one is not obliged to help; and if the infliction in question is biblically, what difference is it whether the owner is present or absent (he is biblically obliged to redeem the animal of its infliction at any rate)? Nay, the infliction is so biblically, and the decision that in the absence of the owner he is free, is not to be understood as meaning entirely free, but free to do it without compensation; but in the absence of the owner he must do for compensation. This is supported by the

following Boraitha: "An animal belonging to a heathen, he must trouble himself with it as it were an Israelite's." This is correct. If the infliction is biblically there is no difference to whom the animal belongs; but if it is not biblically, why must he trouble himself about a heathen's animal? It may be said he must do so not to cause animosity, and so it seems from the latter part, which states: "If it was loaded with prohibited wine, he need do nothing with it." And this can apply only when the infliction is *not* biblically; for if it is, what difference is it with what material the animal was loaded? Nay, the Boraitha means to say that if there was prohibited wine to load, he should have nothing to do with it. Come and hear (another objection). If his friend was needed to unload, and his enemy was needed to load, it is a meritorious act to help the enemy for the purpose of overcoming his wicked nature. Now if the infliction is biblically, his friend should have the preference, because his animal is inflicted? Notwithstanding this, the overcoming of his wicked nature has the preference. Come and hear. The enemy in question is meant an Israelite and not an enemy, an idolater. Now if the infliction would be biblically, what difference is it who the enemy was? (The animal is inflicted.) Do you think the enemy in question means the enemy mentioned in the Bible [Ex. xxiii. 5]? it means the enemy mentioned in the Boraitha (who needs help in loading). Come and hear. The word lying, in the just cited verse, means that the lying occurred through the burden, but not when his habit was to lie down while under burden, "lying" and not when it was standing, "under his burden" and not when it was unloaded, "his burden" such as it could stand, but not otherwise. Now if the infliction is biblically, what difference is it between lying and standing? The Boraitha is in accord with R. Jose the Galilean, who holds that the infliction is not biblically, and it seems to be so from the statement "under such a burden which it could stand," and such a theory was heard from R. Jose only.

The rabbis taught: "It is written [ibid., ibid. 5] "if thou see"; one may say that even when he was far away; therefore it is written [ibid. 3] "if thou meet"; and lest one say that only by an exact meeting (but not when he happened to be near him), therefore it is written "if thou see," to indicate that his seeing was when it was possible to meet him; and the conjecture of the sages was a seventh and half part of a mile distant, which

was known as a *riss*. A Boraitha in addition to this states that he must accompany him the distance of a *pazsa*. Said Rabba bar bar Hama: "Provided he is paid."

MISHNA *XIII.*: If one lost a thing as did his father before, his own has preference. The same is the case with his master. If, however, his father and his master have lost an article at the same time, his master has preference because his father brought him only into this world, while his master, who taught him wisdom, brings him into the world to come; if, however, his father was a sage, he has the preference (*i.e.*, to trouble himself for him). If his father and his master were overburdened, he should unload his master first, and after his father. If both were in prison, his master has preference to be redeemed; if, however, his father was a sage, he has the preference.

GEMARA: Whence is this deduced? Said R. Jehudah in the name of Rabh: "It is written [Deut. xv. 4] 'No needy man among thee'* (above, p. 69), which means that yours has the preference always." The same said again in the name of the same authority: "Although the law is exactly so, he who always acts accordingly will finally need the support of others." (Rashi explains this that he who is always particular that *he* shall have the preference absolves himself of charity, of bestowing favors, and is not respected, and therefore he stands alone and will finally need support.)

"*If his father and his master were overloaded*," etc. The rabbis taught: "The master in question is meant one who has taught him the wisdom of Gemara" (*i.e.*, the reasons of the decisions of the Mishna and that they do not contradict each other, and some sense for allowed and not allowed obligations and absolutions of the Scripture.—Rashi); "but not who taught him Scripture, exact Mishnayoth," is the dictum of R. Meir. R. Jehudah says: He who taught him the greater part of his wisdom only is considered his master. R. Jose, however, maintains: "That even if he enlighted his eyes in only one Mishna, he is to be considered his master." Said Rabha: "As, *e.g.*, R. Sh'orah, who explained to me the word Zuhma with the word Listrum."† Samuel tore his garment at the death of one of the

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* The Scripture reads *Bekha*, literally *in thee*, which the Talmud explains, there shall be no needy in thyself.

† In Section Jaharot (Keilim, XXV., 3) this word is to be found, and Rabha said: "It was known to me that it is a vessel but I did not know what kind, and he explained to me that it means a soup strainer" (Rashi).

rabbis who had explained to him only one expression in the Gemara. Said Ula: "The Babylonian sages arise one before another, and tear their garments, for the death of one of their colleagues; however, concerning a lost thing of which the master has preference, they do not consider only the master of whom he had learned the greater part of his wisdom."

R. Hisda questioned R. Huna: How is it with a disciple whom his master needed? And he answered: "Hisda, Hisda, I have not any need for you; you, however, need me for forty years more." They both became angry, and did not visit each other any more. R. Hisda, however, fasted forty days for the disgrace of R. Huna, and R. Huna did the same because he suspected that R. Hisda with his question meant him. "It was taught: R. Itzhak b. Joseph in the name of R. Johanan said: The Halakha prevails in accordance with R. Jehudah. R. Aha b. R. Huna in the name of R. Shes'heth said: The Halakha prevails according to R. Jose." Could R. Johanan say so? Did he not say elsewhere that the Halakha prevails in accordance with an anonymous Mishna, and our Mishna states his master, who taught him wisdom? By the word wisdom, *i.e.*, the greater of his wisdom.

The rabbis taught: "They who occupy themselves with the study of Scripture are not to be blamed, but, on the other hand, not to be praised. With the Mishnayoth, however, they are to be praised, and will be rewarded; but with the Gemara there is not a better custom. However, look to occupy thyself with the Mishnayoth better than with the Gemara." Does not the Boraitha contradict itself? It states there is not a better custom than the Gemara, and immediately it states, Occupy thyself with the Mishna. Said R. Johanan: "In the time of Rabbi the above Mishna was taught; in consequence all the disciples left the Mishna and started the Gemara; he therefore lectured again, "Occupy thyself better with Mishnayoth," etc., and subsequently his above lecture was added to the Mishna.* What

* This remarkable statement is interpreted by Rashi thus: When the disciples of Shamai and Hillel increased to a great number (about three generations before Rabbi), differing and quarrelling so, that it looked as if there were two Torahs. In addition to this, persecution by the government was increased daily, and new disagreeable decisions were renewed day by day, so that they could not give the proper attention to revise the point of their differences, until the days of Rabbi. When the Almighty gave him grace in the eyes of Antoninus Cæsar of Rome, who abolished all the disagreeable decisions, and Rabbi had the opportunity to compile the Mishnayoth, which was oral until his time. He assembled all the disciples

was the basis of the above-mentioned lecture? R. Jehudah b. Ilayi lectured as follows: "It is written [Isaiah, xvi. 5]: 'Hear the word of the Lord, ye that tremble of his word. Your brethren that hated you, that cast you out for the sake of my name, said, Let the Lord be glorified, but he will appear to your joy, and they shall be made ashamed.'" "Tremble of his word" means the scholars who study Gemara; "your brethren" means those who study the Scripture; "that hated you" means the students of the Mishnayoth (the students of the Mishnayoth, says Rashi, hated the students of the Gemara, because the latter had decided that the students of the Mishnayoth, without Gemara, are the destroyers of the world, because they act according to the Mishnayoth without knowledge of their sources and bases, and very often the Halakha does not prevail according to their decisions); "that cast you out" means the common people. But lest one say their hope has ceased, therefore it is written: "He will appear to your joy"; and may one say that Israel will be ashamed, therefore it is written: "And they (the idolaters) shall be ashamed, and Israel will rejoice." *

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of Palestine, and each of them had to report a Halakha which he had heard from a great man, which was written down in the name of each author, and only then the sections of the Mishnayoth were classified; *i.e.*, the Halakhas which belong to damages, women, festivals, etc., were selected, separated in sections. Rabbi, however, omitted from some Mishnayoth the name of their author for the purpose of establishing the Halakha accordingly, which probably could not be done if it were taught in the name of individuals, and when this was done, the Mishna mentioned in the text was said, *i.e.*, "there is not a better custom than to study the Gemara," which means, to understand the sources and reasons of the decisions of the Mishnayoth. But when Rabbi saw that all had occupied themselves with the study of Gemara, without repeating the Mishnayoth itself, he was afraid that the name of the sages and the obligation would be changed, so he lectured again: "Occupy thyself with Mishnayoth." See our brief general introduction, Section Festivals, Vol. I., p. xv, in which we give the history of the Mishnayoth differently, the basis of our opinion being the majority, who differ with Rashi, and say that the Mishnayoth was written down many generations before the time of Rabbi. In our periodical "Hakol," Vol. VI., No. 1, we published an article pointing out all the names of them who agree with Rashi and all those who are contrary, also the opinion of the late famous Dr. Gellenik. See also "Dour Dour Vedourshow," by I. H. Wise. All details of this matter for the English reader will be found in our forthcoming history of the Talmud.

* We have followed Leeser in the translation of the verse. It seems, however, that the verse was different before the Talmudist, as the end mentioned in the text is not to be found there, and also the translation, "he will appear to your joy," is not in accordance with the Talmud, which translates, "and we will see your joy," and Rashi explains that the prophet says, "I and all your brethren mentioned above will see your joy." It may be, however, that the end of the verse was added only because it is the end of this chapter, and their custom was to finish with a good word.

CHAPTER III.

LAWS RELATING TO BAILMENTS, HIRERS, LOSSES ON DEPOSITED ARTICLE AS TO THEIR QUANTITY AND THEIR QUALITY, AS TO THE CARE TO BE BESTOWED ON DEPOSITED ARTICLES BY THE DEPOSITARY, AND OF MONEY WHETHER IT MAY BE USED.

MISHNA *I.*: If one has deposited an animal or vessel with his neighbor, and they were stolen or lost, and he paid, because he refused to take an oath [according to the law that a gratuitous bailee must swear and is acquitted], and thereafter the thief was found, who must pay the double amount, or in case he has slaughtered or sold, four and five fold, to whom shall he pay? To him who has kept the bailment. If, however, the bailee took an oath, because he refuses to pay, and the thief was found, he must pay the above-mentioned amount to the owner.

GEMARA: "*He has paid, because he refused,*" etc. Said R. Hyya bar Abba in the name of R. Johanan: "The expression 'paid' is not to be understood that he has done so already, but if he said, 'I will pay,' it is to be considered paid." And there is a Boraitha in accordance with his statement, viz.: "If one has hired a cow of his neighbor, and it was stolen, and the hirer said, I will pay rather than take an oath (that it was not an accident), and thereafter the thief was found, the double amount belongs to the hirer."

R. Papa said: "A gratuitous bailee, when he said, 'I have neglected my duty' (which makes liable for payment), acquires title of the double amount because he could be acquitted if he should claim it was stolen. The same is the case with a bailee for hire, when he claims 'stolen,' because he could be acquitted by claiming it was crippled or died (in which case he is not responsible); and also a borrower, if he said, I am ready to pay, he acquires title for the double amount, as he could acquit himself by claiming the animal had died while laboring." Said R. Zbid to him: "So said Abayi: A borrower does not acquire title of the double amount, unless he has already paid. Why so? for all the benefit he has derived was only upon his word, without any

actual payment. It is not sufficient his saying, I am ready to pay." And there is a Boraitha supporting him: "If one borrowed a cow of his neighbor, and it was stolen, and the borrower hastened and paid, and thereafter the thief was found, the double amount belongs to the borrower." Shall we assume that the Boraitha is an objection to R. Papa's statement? He may say, has, then, the Boraitha more strength than our Mishna—does not the Mishna state, "and he paid," and nevertheless it was interpreted that the same is the case if he says, "I will pay"? Why should not this same explanation apply to the Boraitha? But what comparison is it? The Boraitha states, "he hastened and paid," which is not the case in the Mishna. But why should it not be explained he hastened to *say*, "I will pay"? Nay, the same Boraitha expresses in the case of a hirer, "he *said*," and in the case of a borrower, "hastened," hence the Boraitha was particular as to its word. But whence do we know that the Boraitha's statements were taught together—perhaps each statement was taught seperately, consequently no special attention must be paid to the wording? The disciples of R. Hyya and R. Oshia were questioned, and the answer was, that all the statements of the above Boraitha were delivered at one time.

It is certain that if he previously said, "I will not pay," and afterwards he declared, "I will," it is a reconsideration and must be counted; but how is it if it is *vice versa?* Shall we assume this also a reconsideration, or perhaps he intended to pay, but as he had no cash, he only postponed payment? Also how is it if he promised to pay, and dies, and his heirs refuse, or he dies without saying anything, and his heirs pay, does the double amount belong to them, or can he say to them, "If your father would promise to pay I would be pleased to transfer the double amount to him, but with you I have nothing to do, as probably you were aware of the double amount, and, therefore, you paid"? These questions are not decided. R. Huna said: "In all cases an oath is given to the baileè that at that time the article is not in his possession, for fear, perhaps, he would prefer to keep the article for himself, and, therefore, he paid for it." *

There was a man who deposited a nose jewel with his friend, and when being required to return, he said, "I do not know where I put it," and when the case came before R. Na'hman, he

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* There are objections and answers concerning oaths, which are repeated in Tract Shebuoth (Oaths), therefore omitted here.

said: "Such an answer shows a neglect of duty, and you must pay." The man did not submit to R. Na'hman's decision, unless R. Na'hman made him pay by force. Finally, the article was found, and was increased in value. Said R. Na'hman: "Return it to its owner and have your money refunded." Said Rabha: "I was sitting before R. Na'hman when he decided the above case, and our study was in this chapter, and I questioned him, Is not this case equal to the statement of our Mishna: If he paid and refused to swear, etc., and R. Na'hman did not answer, (and thus deliberating this matter I came to the conclusion that) it was right in him not to answer, because the case in our Mishna does not treat of a case where he was troubled by the court, as in this case." (Says the Gemara:) "Shall we assume that R. Na'hman holds that property appraised by the court, for the sake of the creditor, and delivered to him, should be returned to the defendant when he brings cash? Nay! The above case of the nose jewel is different; as the article was in his possession, no appraisement could be made; hence the appraisement itself was an error. (However, when the court appraises by examining the article, no change is to be made.) The sages of Nahardea, however, hold that even a correct appraisement by the court is to be returned in twelve months (when the defendant brings cash). Said Amemor: "I myself am a Nahardean, and I hold that an appraisement is always to be returned." (Said the Gemara:) "So the Halakha prevails, because it is written [Deut. vi. 18]: "And thou shalt do that which is right and good," etc.*

It is certain, when it was appraised for the sake of a creditor, and the latter appraised it for his own creditor, the returning may take place, because it may be said to the latter creditor, You cannot be entitled to any more privilege than this defendant. The reverse is the case when the creditor sold it, or gave it as a present, because the intention of the people was given to the estate but not to the value of it. The same is the case if it was appraised for a widow (according to her marriage contract) and she remarried, and the same is also when the estate was appraised for the sake of a creditor of a widow, and after she remarried and died her husband cannot require for returning, as he is considered a buyer (and not an heir), to whom the law prescribes no returning

* Of which it is to be deduced that if it is possible to moderate the strict law without any trouble it must be done.

shall take place, neither by nor to him. As R. Jose said: "It was enacted in the city of Usha that if a woman sold her estate, called mulgeo* (*i.e.*, an estate in which her husband has the usufruct, the use of the products and the principal estate remain hers) while her husband is yet alive and she dies, the husband may take it away from the hands of the buyer." If, however, the creditor took the estate for his debt without appraisement, but with the admission of his creditors, it may be returned or not. R. A'ha and Rabbina differ; according to one it may not, because it was a correct sale, as the debtor had given it with his good will; and according to the other it may, because the sale is not to be considered a good one, as the debtor did it only because he was ashamed to go to court, but not with his good will.

From what time may the creditor use the products of an appraised estate? According to Rabba, as soon as the warrant reaches him; and according to Abayi, from the time the warrant was signed by the court. Rabha, however, says: "The warrant that the estate shall be sold for his debt does not suffice even when it is in the hands of the creditor, provided the time of heraldry had elapsed." (The previous products, however, belong to the debtor.)

MISHNA *II.*: If one has hired a cow and he loaned it to some one else, and it died a natural death, the hirer takes an oath that the death was natural, and the borrower must pay to the hirer. Said R. Jose: "How could the hirer do business with the cow, which did not belong to him? Therefore the cow, or the value of it, must be returned to the owner."

GEMARA: Said R. Idi b. Abin to Abayi: "Is not the oath the only reason for acquiring title? Let then the owner say: Keep aloof from this case with your oath, and I will summon your borrower (as it did not die while in your possession). It will be better for me to summon the borrower (who is responsible even for an accident)." And Abayi answered: "Do you think that the oath is the only reason for the title? It is not so. The title is acquired with the death of the animal, the title of its value is acquired to the hirer, and the oath is only to please the owner."

R. Zera said: "It can happen that the hirer has a right to require several cows from the owner for one cow. How so? (As the explanation of this queer proposition is so clearly illustrated

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* *Mulgeo* means milking, and it is used in a case where the milk is always drawn away, and the cow, the principal, loses nothing by the operation.

by Rashi, we omit the explanation given in the Gemara, and we append it in a foot-note.*) Said R. A'ha of Difta to Rabbina: "Let us see. It was only one animal which was going from borrowing to hiring, and *vice versa*. Why then should he furnish him with four—is it not sufficient he should furnish him with two, one of them to remain the property of A and the other for the remaining labor days"? And Rabbina answered: "Is then the animal yet alive, that it could be said so? The animal is dead, and there were two cases of hiring and two cases of borrowing, and he has a right to receive compensation for each case, also for each hiring of the labor days." Mar bar R. Ashi, however, maintains: "A is entitled to two cows only, one for both cases of hiring, and one for both cases of borrowing; as the cases under one name cannot be considered two, because all this occurred with only one animal (as explained above)."

It was taught: "A bailee who has transferred the bailment to another bailee, according to Rabh the first bailee has the same responsibility as if he would take care of it himself, (*i.e.* he is free from accident). According to R. Johanan, the first one is responsible even for an accident." Said Abayi: "According to Rabh's theory, not only a gratuitous bailee who transferred to a bailee for hire, who has increased the responsibility of it, is not responsible any more than the prescribed law of such a bailee, but even if he was a bailee for hire and he transferred it to a gratuitous bailee, that the responsibility was decreased; the same is the case, because he transferred it to one who was able to take care of it (consequently he did not neglect his duty); and according to R. Johanan's theory, not only a bailee for hire who transferred it to a gratuitous bailee, in which the responsibility was decreased, but

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* A hired an animal of B that he should labor with it one hundred days, and then B asked A, as a favor, he should loan it to him for ninety days of the hundred, and subsequently he should return it to A for the remaining ten days, and if death occurred during the time it was yet borrowed, B, although he is the owner, is now considered a borrower only, who is responsible. But if A after he had loaned the hired cow to B, the owner, hired the same again for eighty days, B is considered a borrower of the animal, who hired it to another one for labor. Now if the animal dies while under the control of A he has only to take an oath that the death was natural and B must furnish him with another cow instead. If, however, B has borrowed it again for seventy days out of the eighty of the second hiring, and death occurs while under B's control, then A has only to take an oath for the natural death, and B, the borrower, has to furnish A with four cows—two for the two times he has borrowed from him, *i.e.*, as the time of his borrowing is not yet elapsed it is considered as if he had loaned him *two animals* and two deaths occurred, and the other two he must furnish him for the remaining labor days he hired from him.

even a gratuitous bailee who transferred it to a bailee for hire, in which the responsibility was increased, he is nevertheless responsible for all that occurs, because the owner may say, "I have trusted the bailment to you, not to any one else, as I did not want the bailment to be under the control of some one else." Said R. Hisda: "Rabh's statement was not made by him directly, but it was inferred from an act which happened, namely: There were gardeners who had deposited their spades at a certain old woman's; one day, however, one of them gave it for safekeeping to his comrade, and when the latter heard voices from a wedding procession and wanted to accompany it, he transferred the spade of the above to the old woman, and when he returned, he found it was stolen. When the case came before Rabh, he acquitted him. Those who have heard this decision thought that it was because of the law that a bailee who transfers the bailment to another bailee is free; in reality, however, Rabh acquitted him because the depositor himself used to deposit his articles with the same old woman; consequently he could not claim that he would not trust her with his bailment. R. Ami was sitting and declaring the just stated Halakha, and R. Abba bar Mammal objected to his statement from our Mishna: "One hired a cow," etc. Now if the above statement is correct, why could not the owner of the animal claim, "I did not want that my bailment should be under the control of another one"? And he answered: The Mishna treats of a case where the owner gave him permission to loan it to some one. If so, the owner has a right to the value of the cow? The owner told him, You can do so to whomever you like (and so he cannot claim any more that he does not want his bailment to be under another's control).

Rami bar Hama objected to this from Mishna VII., in this chapter, which states that if he transferred them to his little children, etc., of which it is to be inferred that if he would transfer them to his big children, he would be free. Why so? The owner could claim, "I do not want my bailment to be under another's control." Said Rabha: "Usually, when one deposits an article for safekeeping with any one, he intends that he may ask his wife and children to take care of it, and the sages of Nahardea said: "That it seems the cited Mishna is rightly explained so, as it states, 'his little children,' of which it is to be inferred that if he would give it to the care of the big ones, he would be free."

However, the case is only with his children, not with strangers, for if he would transfer them to strangers, he would be responsible

at any rate, for the reason that the bailee can claim that he did not want it in the control of another, as stated above." Rabha said: "The Halakha prevails, that a bailee who has transferred the bailment to another bailee of any kind is responsible. Why so? Because the owner may say, that you alone are trusted by me with an oath, but not the man to whom you have transferred it."

It was taught: "If the bailee has neglected his duty, and the animal was going out to the rushes and dies a natural death, Abayi in the name of Rabba makes him liable, and said: That any judge who would decide to the contrary is not worthy to be a judge, as not only according to him who holds that if an accident follows a neglect, there is a liability, he is responsible, but even according to him who holds that in such a case there is no liability, in this case he would admit that he is responsible. Why so? Because it may be said that the air of the rushes killed it (hence it is not the accident, but the neglect, which caused the death)." Rabha, however, in the name of Rabba said: "He is free, and every judge who decides to the contrary is not worthy to be a judge, as not only according to him who holds that if an accident follows a neglect there is no liability, but even according to him who holds to the contrary, would admit that in this case he is free. Why so? Because there was a natural death, and there is no difference to the Angel of Death where his subject is placed." Rabha, however, admits that if it was stolen from the rushes, although it dies a natural death in the house of the thief, the bailee is nevertheless responsible. Why so? Because if it were alive, not he, but the thief, would possess it (consequently, before he dies the liability came simultaneously with the theft).

Said Abayi to Rabha: "According to your theory, that there is no difference to Angel of Death where it is placed, the answer of R. Ami to R. Aba stated above, p. 86, that it treats of a case where the owner has permitted the hirer to borrow it, etc., would not be satisfactory, as also in their case a natural death occurred and he could claim that it is no difference to Angel of Death where it was placed." Rejoined Rabha: "According to you the objection was: That the owner could claim, 'I do not want that my bailment should be under the control of another,' your objection could be sustained; but I said that the claim of the owner was that the first bailee only is trusted by him with an oath, but not any one else; hence your objection cannot be sustained."

Rami bar Hama objected from the following Boraitha: "If he brought the animal to a steep hill, and it falls and dies, it is not to be considered an accident, and he is liable." Of which it is to be inferred that if a natural death would occur while yet on the steep hill, it would be considered an accident. Why? Let him say that the mountain air or the labor of ascending such a high altitude has killed it? The Boraitha treats when it was brought to a good fat pasture.

"*Said R. Jose*," etc.: Said R. Jehudah in the name of Samuel: "The Halakha prevails in accordance with R. Jose." Said R. Samuel b. Jehudah to R. Jehudah: "You declared to us in the name of Samuel that Jose differs also with the first Mishna (in case of double payment); does the Halakha prevail according to him against the first Mishna also or not"? And he answered: "Yea, so it is!" The same was taught in the name of R. Elazar. R. Johanan, however, said: "R. Jose agrees with the first Mishna, in case he has already paid." Already paid! Did not R. Hyya b. R'Aba declare in his name (above, p. 81) that even if he said, "I am ready to pay," suffices? Say then, R. Jose agrees with the first Mishna in case the defendant declared already, "He is ready to pay."

MISHNA *III.*: If one said to two persons, I have robbed one of you the value of a manna (100 zuz) but I do not know which of you, or the father of one of you deposited with me a manna, but I do not know whose father, he must pay a manna to each of them, as he himself admitted his debt.

If two persons have deposited with one person one hundred zuz and the other two hundred, and each of them claims that the two hundred are his, the depository must pay to each of them one hundred, and the remaining hundred should be deposited until Elijah will come. Said R. Jose: If so, what does the swindler lose? Therefore, the whole sum should be deposited. The same is the case with two utensils: one of them was worth hundred zuz and the other thousand, and each of them claimed that the better one was his; then one of them must get the hundred one, and the other get hundred zuz in cash from the value of the utensils, and the remainder is deposited until Elijah will come. R. Jose, however, objected as said above, and maintained that both utensils should be deposited until Elijah will come.

GEMARA: We see then, from the beginning of the Mishna, that doubtful money is to be collected, and we do not say leave the money with its present possessor, in accordance with the law

of occupancy (Hasaka). Is there not a contradiction in the second part, in case of a deposit, where the doubtful hundred zuz must be deposited? The answer was: "Do you want to contradict a case of a deposit with a case of robbery?" A robber must be punished, but not a depositor.

There is, however, contradiction of both robbery and deposit. In case of a deposit it is stated in the first part: The father of one of you has deposited, etc. He must pay a manna to each of them. And in the second part, in case of the deposits of one and two hundred, it states that the doubtful hundred shall remain, etc. Said Rabha: "The first part is to be compared to two men who have deposited separately, one in the absence of the other, two bundles, where it is the duty of the depository to be very particular with the bundles and to mark on each of them to whom it belongs (so he ought to know whose father deposited with him). And the second part treats of a case where both persons deposited together the above sum, and it is to be compared as if they would put their moneys in one bundle, in which case the depository may say: You yourself were not particular in separating the sum to whom it belongs; then shall I be more particular than you? The contradiction of a case of robbery to the other case of the same is as follows: There is a Mishna (First Gate, p. 233): "If one robbed one of five persons and does not know the one, and each of them claims, 'He was robbed,' the robber may place the sum among them, etc., and depart, so is the decree of R. Tarphon."

We see, then, that we do not collect money in case of doubt because of the law of occupancy, and our Mishna, however, states that the robber must pay a manna to each of them (hence doubtful money is to be collected?). Are you then certain that our Mishna is in accordance with R. Tarphon? Yea! As in addition to the cited Mishna it is said that R. Tarphon admitted that if one said to two persons, "I have robbed one of you of a manna and I do not know who is the one," he must pay a manna to each of them. (Hence the contradiction is clear.) Nay! There is no contradiction. R. Tarphon speaks of a case when both persons summoned him; and our Mishna treats of a case when the robber repents and would like to satisfy the heavenly will, and it seems that our Mishna must be so explained, as it closes with the expression that he himself admitted his debt. Infer from this that so it is.

The master says: "When both parties summon him." But

what does the defendant claim?" R. Jehudah in the name of Rabh said: "He kept silence." And R. Mathnah said in the name of the same: "He denies knowing either of them. According to him who says he denies, if he keeps silent it would be counted as an admission, and according to him who says he kept silent, this silence is not counted as an admission, as he may declare, 'I kept silent before each of them because I thought, perhaps he is the one who deposited the greater sum.'"

The master said: "The robber may place the sum thus robbed and depart." And what shall be then? Shall the five take the sum? Did not R. Aba b. Zabda declare in the name of Rabh (above, p.): "Every doubt," etc.

Said R. Saphra: "The expression 'departed' means this: He is to place the sum *before the court* in presence of the five men, saying, 'Who of you is robbed shall bring evidence'; and as they could not do so, he may depart with the money,* and it shall remain with him until evidence is brought." Said Abayi to Rabha: "Did not R. Aqiba say that such a way would not keep him from transgression, but he must pay the sum robbed to each of them? Hence we see that on account of doubt money is to be collected, and not to leave the money with the possessor in accordance with the law of occupancy (and in Tract Baba Bassra, 155*b*, we heard him saying that the law of occupancy has the preference)? And he answered: There was an uncertainty of both the plaintiff and the defendant, and here it is only an uncertainty of the plaintiff, but the defendant is certain that he has robbed one of them. But is not the case in our Mishna also, an uncertainty of both the plaintiff and the defendant, as the latter says to each of them, "I do not know whether *you* were robbed"? It is already explained above that our Mishna treats of a case where he repents and would satisfy the heavenly will. Said Rabbina to R. Ashi: "How could Rabha say, if there were two bundles he ought to be particular to know to whom each bundle belongs. Did not Rabha or R. Papa say elsewhere: That all agree in case where two men have deposited with a shepherd, one two sheep, and one one sheep, in the presence of both, and thereafter each claims the two sheep are his, the shepherd must place three sheep before them and depart? And he answered, There the case was where they deposited in his flock in his absence."

* In the text only one word, *Veyonēach*, was Saphra's answer, and the explanation is translated by us from Rashi.

The same is the case with two utensils, etc. Why the repetition? Is this case not the same as the previous? To teach us that even in the case of utensils, which may involve a loss by selling the better one, the rabbis are nevertheless of the same opinion.

MISHNA *IV.*: If one deposits fruit at his neighbor, he must not touch it, even when should they be lost (destroyed by mice or by decay). R. Simeon b. Gamaliel, however, maintains, that he must sell it by order of the court, as this is similar to returning a lost thing.

GEMARA: What is the reason of the first Tana of our Mishna? Said R. Kahana: "Usually one is pleased with his own goods, be it a ninth part, as with the goods of a stranger, be it multifold." R. Na'hman b. Itzhak, however, said: "Because it is to be feared,* perhaps the owner of it has separated it for heave-offering or tithe." Said Rabba b. b. Hana in the name of R. Johanan: "The Tanaim of the Mishna differ only when the fruit becomes diminished as usual (further on is explained the measure of usual loss of each kind of grain and fruit); but if the loss would be more than usual, all agree that he may sell it by order of the court." An objection was raised from the following: If one has deposited fruit at his neighbor's, and it decays; or wine, and it becomes sour; or oil, and it creates a stench; or honey, fermenting, one must not touch it; such is the decree of R. Meier. The sages, however, say: "He may try to prevent the loss and sell it by order of the court, provided he does not buy it for himself. Similarly, holders of charity funds, when there is no poor to whom to distribute, may change the money to any one, but not to themselves. Officers who are appointed to distribute food to the poor, if there is none, they may sell it, provided they do not buy it for themselves." Now the Boraitha states: "Fruit, and became rotten"; does it not mean even more rotten than usual? Nay, it means as usual. It states: "If wine becomes sour," etc., which certainly means that it is entirely spoiled for consumption? With beverages it is different, as there is no remedy (this would be correct with wine that becomes sour, and then has yet a value as vinegar, but oil and honey) when spoiled, what use can be had of them? Oil to smear the heels of footwear, and honey to use as salve for the camel wounds. The Boraitha states: "According to the sages he may try to

* It means to state that this law was an old one, in time when heave-offering and tithes were observed.

prevent the loss." What should he do? Said R. Ashi: "He can save the pitchers which contained the spoiled articles; for if anything remains within, the pitchers may also become spoiled. What is the point of their difference? According to one, care should be taken only for a great loss, but not for a trivial loss; and according to the other, care must be taken even for a trivial loss.

"*R. Simeon b. Gamaliel said,*" etc. It was taught, R. A'ba b. Jacob in the name of R. Johanan said: "The Halakha prevails in accordance with R. Simeon." And Rabha in the name of R. Na'haman said: "The Halakha prevails in accordance with the sages." But did not R. Johanan declare conclusively that when R. Simeon b. Gamaliel is mentioned in the Mishna the Halakha prevails in accordance with him—why then the repetition? There are Amoraim who differ concerning R. Johanan's decision; according to some of them the decision was conclusive, and according to others the decision was rendered not for all time (*i.e.*, in some instance the Halakha does not prevail according to Raban Simeon).

It was taught: "If one becomes a prisoner, according to Rabh his property must not be transferred to the nearest relative; and according to Samuel, it may." If there was a rumor that the man was dead, all agree it may be done; but if there is no rumor about his death, Rabh maintains: "It may not, because the relative may spoil his property"; and Samuel maintains it may, because the master decided that when the owner of the property returns, the man who kept his property for him may be rewarded, as usually gardeners take a share for tilling the ground (*i. e.*, that from each property he receives his share), he would not spoil it. An objection was raised from the following Boraitha: R. Elazar said: "It is written [Ex. xxii. 23]: 'My wrath shall wax hot, and I will slay you with the sword,' etc. From this it is understood that their wives remained widows and their children orphans. For what purpose, then, does the verse add, 'and your wives shall be widows and your children fatherless'? To indicate that their wives would wish to remarry, but would not be allowed, and their children would beg that the property of their father should be transferred to them, and it will not be granted (*i.e.*, they will be prisoners, hence the property of a prisoner is not to be transferred to his relatives)." Said Rabha: "It was taught that it may be transferred to them, but they may not sell it. Such a case happened in Nahardea, and R. Shesheth

did not allow the transfer of the property to his relative to be made, basing his decision upon the just quoted Boraitha." Said R. Amram to him: "Perhaps the Boraitha is taught as Rabha amended it." And he rejoined: "Are you not a Pumbadithan, who tries to pass an elephant through the eye of a needle? Does not the Boraitha make the wives equal to their children? As the wives are entirely forbidden to marry, so are the children entirely from their father's property."

Says the Gemara: However, in the case in question the Tanaim of the following Boraitha differ. If one took possession of the estate of a prisoner, he must not be compelled to give it up; furthermore, if he was informed that the prisoner was about to be liberated, and he hastened to use the products of the estate, he is considered diligent, and rewarded. And the following are considered property of prisoners. If his father, brother, or one of his grantors went to the sea-countries, and there was a rumor that they were dead, whoever takes possession of their abandoned property, he must be compelled to give it up. And the following is considered abandoned property. "If the owners went to the sea-country, and no rumor of their death was heard." [R. Simeon b. Gamaliel, however, said: "I have heard that the latter's property is equalled to the prisoner's.] The same is the case with him who takes possession of forsaken property. And what is called forsaken property? If its owners are somewhere in the neighborhood, but cannot be found. Why, then, is the former called abandoned and the latter forsaken? Abandoned means, he was compelled to leave it; as it is written [Ex. xxiii. 11]: "But the seventh year shalt thou let it rest and lie still," * which is a decree of the Lord, and the latter means that he has forsaken it willingly, as it is written [Hosea, x. 14]: "The mother was dashed in pieces upon her children." The Boraitha adds, it was declared that all those who take possession of such land, their compensation must be appraised as if they were hired as gardeners.

Now let us see in which case this addition applies? It cannot be applicable to the case of prisoners, as it was stated above that

* The Hebrew word for it is *Nietooshim*, which means literally "abandoned"; and the second, *Retooshim*, which means split, and thus according to the meaning of the verse. It is translated by Leeser as in the text, which certainly also means unwillingly. Rashi, however, explains from the beginning of the verse, which is literally a tumult, that for fear enemies will rob the land the inhabitants ran away and left the land desolate; and the Gemara considers it as if it were done willingly.

he is considered diligent; and also not in the case of forsaken property, as it is stated that he must be compelled to give it up; consequently it applies only to the case of abandoned property. But according to whom? Shall we assume that it is in accordance with the rabbis? Did they not declare that also in such a case the possession must be given up; and if in accordance with R. Simeon b. Gamaliel, did he not declare that he heard that this case must be decided as the case of prisoners? Yea! As in the case of prisoners, but not in all respects. It is equal only in case the possessor need not give it up, but not in case that he should be considered diligent, as his compensation is to be appraised as that of a gardener.

But why is this case different from that in the Mishna (Kethuboth, Chap. VIII., Mishna 3), which states that all he has done must be recognized? Nay! It is similar to the following case only, in which case it was said by R. Jacob in the name of R. Hisda, that if one incurred expense for the estate of his wife who is not yet of age, it is to be considered as if he incurred the expense for the estate of a stranger, which does not belong to him (*i.e.*, for which he may never be reimbursed). Why so? The rabbis enacted in such a case a rule to prevent the possessor from spoiling the estate, and the same is made here in our case for the same purpose.

But did not the Boraitha state "all of them, their compensations must be appraised," etc.? What does the expression mean? "All of them"? To add to what R. Na'hman said in the name of Samuel, that if one became a prisoner, his estate may be transferred to his relatives, and if he left his estate willingly, this is not to be done. R. Na'hman, however, declares his own opinion to be that if he was compelled to run away, he should be considered as a prisoner. Because of what does he run away? If for the reason that he has not paid his duty, is it not the same as if he abandoned his estate willingly; therefore, it must be explained that R. Na'hman means that he ran away because of some crime. Said R. Jehudah in the name of Samuel: "A prisoner who left ripe stalks for cutting, or grapes, dates, or olives for pressing, the court should appoint a guardian who shall do all work necessary, and then transfer it to his relative. But why should the garden not remain until his return? For adults, full-grown men, no guardians are appointed."

R. Huna said: "The estate of a prisoner must not be transferred to a minor relative, and not the estate of a minor to any relative, and also not to a relative of his relative (*e.g.*, a minor

who has a brother of his father, and this brother has a brother of his mother, who is a perfect stranger to the minor). It must not be transferred to a minor relative, because he may damage the estate; and also not to a relative, and a relative of relatives, because in the course of time they may possess it without any protest; they would keep it for themselves permanently, basing their possession upon the law of Occupancy."

Said Rabha: "It is to be inferred from R. Huna's statement above, that possession is not taken of the estate of a minor, no matter whether he is an uncle on his father's or mother's side; no matter whether it was land or houses, and also no matter whether the division among the brothers took place or not."

There was an old woman who had three daughters. Together with one of them she was taken to prison, and of the remaining two, one died and left a child. Said Abayi: "What shall we do? Should we transfer the estate to the remaining living daughter, who is here, then perhaps the old woman will die, and the minor will become an heir; and there is a rule that the estate of a minor must not be transferred to a relative in trust. Should we transfer the estate to the child, then perhaps the old woman will not die; and there is a rule that no minor can be appointed as guardian to the estate of a prisoner. Therefore, the half of the estate should be given to the sister, who is here; and a guardian shall be appointed for the other half for the sake of the child." Said Rabha: "When there is no other way but the appointment of a guardian for the half, then he shall be appointed rather for the whole estate." Finally, it was heard that the old woman was dead. Said Abayi: "Now, one-third of the estate should be given to the sister, and one-third transferred to the child, and the remaining third should be divided one-half to the sister, for safe-keeping, and for the other half a guardian shall be appointed for the sake of the child." (Rashi explains thus: One-third certainly belongs to her, as she is an heir; the same is the case with the other third of the minor; the remaining third, however, belongs to the sister who is a prisoner, whose existence is doubtful. Now, the half of her inheritance must surely be transferred in trust to her sister, as the law allows a relative to be a guardian; and, at any rate, her sister may take possession of it, if she is dead, as she is the heir; and if she is still alive, she is to be considered a guardian. The other half, however, if she is dead, the minor is an heir; but if she is alive, she cannot be a guardian, because of age; and, therefore, a guardian must be appointed.) Said

Rabha: "If a guardian, then he must be appointed for the whole third."

A brother of Mari b. Isk, who was born in Hoozai, came to him and demanded a share of the inheritance of his father, and he said: I do not know you. The case came before R. Hisda, and he said: Mari is right: as it is written [Gen. xlii. 8]: "And Joseph recognized his brothers, but they recognized not him." And the reason was, because Joseph had departed when he was not yet bearded, and when they saw him he was; therefore it is for you to bring evidence that you are his brother. And he answered: I have witnesses, but they are afraid to testify, because Mari is a powerful man (and they are afraid of being injured by him). Said R. Hisda to Mari: "Then you must go and bring witnesses that he is not your brother." Rejoined Mari: "Is this the law? Is it not a rule that the plaintiff must bring evidence?" And R. Hisda answered: "So is my decision to you and to all powerful men like you." And he rejoined: "What is the use of my bringing witnesses, they will certainly testify for my sake, as they will be afraid to testify against me." Rejoined R. Hisda: "I do not suspect that the witnesses will do two wrong things for fear of you; what they may do is, not to appear before the court, but they are not suspected that they should come and testify falsely." Finally, witnesses appeared, and testified that *he* is his brother. And the brother claimed Mari should give him a share from the vineyards and gardens cultivated by Mari, and R. Hisda said that his claim was right, as there was a Mishna, Chap. ix., in the Third Gate, which stated so. Said Abayi to him: "What comparison is this? The Mishna there treats of a case where were brothers of age and minors, and those of age cultivated the estate; the Mishna states, therefore, the improvement must be divided (*i.e.*, as they know of the existence of their minor brothers, they relinquish the forthcoming share of their labor for the sake of the minors). But here, did Mari know that a brother existed, that he should relinquish his labor for him?" The case was not decided in this court, and came before R. Ami, and he said: "Was it not decided in a case of greater importance, namely, of a relative who took possession of the estate of a prisoner, and improved it, his compensation must be appraised as a gardener; and in this case, as R. Hisda decided, he should take an equal share of the improvement made by Mari, without any compensation even as a gardener, and the case was returned to R. Hisda, and he said: How can it be compared? The case cited by R. Ami was, that the court appointed the rela

tive to take care of the estate, and certainly a compensation must be given him; but here, did Mari do so with the permission of the court? and, moreover, the court could not appoint him as a guardian, because his brother was a minor then, and, as said above, no relative can be appointed guardian of the estate of a minor." The case was referred again to R. Ami, and he said: "I was not aware that his brother at that time was a minor."

MISHNA *V.*: If one deposits fruit, the depository may account to him losses as follow: To wheat and rice, nine half *cabs* to one *coor;* to barley and millet, nine whole cabs; to spelt and flax, three *saahs* to one *coor;* however, all must be appraised according to the measures and circumstances of the time. Said R. Johanan b. Nuri: What do the mice care? they consume all the same, whether more or less; therefore he must account the loss to him for one *coor* only. R. Jehudah, however, says: If there was a large quantity, he may account for no loss at all, because it increases.

GEMARA: Is it not a fact that with rice there is more loss? Said R. bar bar Hana in the name of R. Johanan: "The Mishna treats of shelled rice."

To spelt and flax, etc. Said R. Johanan in the name of R. Hyya: "The Mishna treats of flax which is yet in the stalk, and so we have also learned in the following Boraitha: To spelt and to flax in the stalk, and to rice not shelled, three *saahs* to one *coor*."

All must be appraised, etc. In a Boraitha it was taught so accordingly to each *coor* and circumstance of the season.

R. Johanan, etc. There is a Boraitha which adds as follows: It was said to R. Johanan, Is it not a fact that much of it undergoes a loss, and much of it is scattered?"

Another Boraitha, concerning our Mishna, states: All this is said in case he has mixed it with his own, but if he has assigned a corner for him to put his grain, then he may say: "Yours is before you, take it as it is."

But why should it not be the same, even if he has mixed it with his own? He may take his own, and for the remainder he shall say: Yours is before you? The case was, when he used this grain. But even then let him take the remainder of his own? The case was when he did not know how much he had used of it.

R. Jehudah said, etc. What is to be considered a large quantity? Said Rabba bar bar Hana in the name of R. Johanan: Ten *coors;* and so we also learned in a Boraitha.

A disciple taught before R. Na'hman that all this was said in

case the depositor measured the grain of his barn, and the depository returned the grain also from his barn; but if he returned the grain from his house he needs not to account to him any loss at all, because it usually increases. Said R. Na'hman to him: "Does the Mishna treat of fools who give a large measure and take in return a small one? Perhaps your Boraitha teaches as follows: All this is said when the depositor has given it to him at harvest time, and it was returned to him at the same season; but if he deposited it in the harvest, and it was returned to him in the rain season, he needs not to account any loss, as it increases." Said R. Papa to Abayi: "If it is so, why should not the pitcher full of grain crack in the rain season? It happened that such a pitcher cracked. According to others, the grain which was in a closed pitcher does not increase, for lack of space."

MISHNA *VI.*: The loss of wine counts one-sixth—R. Jehudah, however, says one-fifth—of oil, three *lugs* of each hundred, namely, one and a half for yeast, and one and a half for the absorption of the vessel.* If, however, the oil was already purified, there is no loss for yeast, and if the vessels were old ones, then nothing is to be accounted for the vessels. R. Jehudah, however, says that even if one sells purified oil the buyer bears the loss of one and a half to each hundred *lugs*, for waste† yearly.

GEMARA: And they do not differ. The one of them treats of waxed barrels, as the custom was in his place, which do not absorb much; and the other treats when they were smeared with pitch, as the custom was in his place, and absorbed more. Some say that in some places barrels were made of such kind of clay that did not absorb much. In the place where R. Jehudah used to live, there was usually put forty-eight pitchers into one barrel, and they were sold for six *zuz*. R. Jehudah, however, when he became a storekeeper, sold every six pitchers for one *zuz*, so that for thirty-six pitchers he obtained six *zuz*, and twelve remained for him; counting the loss of eight pitchers for absorption by the vessels, he nevertheless had for his profit four pitchers. But did not Samuel say that one must manage that his profit should not exceed a sixth of the amount? Hence a sixth is allowed? Why, then, did not R. Jehudah manage to have a sixth profit? Because of the barrels and the yeast, which, aside from the four

* Rashi explained above that all vessels at that time were of clay, and therefore a new one absorbed.

† The text uses the word "schmarim," which means literally yeast. Here, however, it refers to waste material.

lugs, remained for him. If so, then R. Jehudah profited by more than a sixth? He took this for his trouble, and for the commission which he had to give to the barrel sellers.

"*If it was purified oil*," etc. But even if there were old ones, it is impossible that they should not absorb some? Said R. Na'hman: The case was when they were waxed. Abayi, however, says, even when they were not waxed, if they were old ones they had already absorbed all they could, and nothing more from the new stuff.

R. Jehudah says, etc. Said Abayi: "In accordance with R. Jehudah's theory, one may mix yeast with the oil he is selling; and that is the reason that the buyer must accept a *lug* and a half for yeast, as the seller may say, If I would like to mix yeast with it you would have to accept; do the same even when I give it to you pure. But why should not the buyer say, If you would put yeast in it, I would sell it with the oil; but now, even if you would furnish me with the yeast separately, what should I do with it, as I cannot sell it separately? The Mishna treats of a private person who prefers clear oil.

And, according to the theory of the rabbis, one must not mix yeast with oil, and therefore one may not accept any loss for yeast, as the buyer may say, As it is not allowable for you to mix the yeast with the oil, I need not accept any loss for yeast. Said R. Papa to Abayi: It seems to be the contrary. According to the sages, he is allowed to mix yeast, and therefore the buyer need not accept any loss for it, as he may say, Because you have not mixed it, you have relinquished it for my sake. And, in accordance to R. Jehudah's theory, the mixing is not allowed, and therefore he must accept the loss of a *lug* and a half, and the seller may say, To mix any yeast with the oil by one is not permitted, and if you were not to accept any loss, where is my profit? Shall I be a business man for buying and selling without deriving any profit from it? There is a Boraitha which states that a buyer or a depository, concerning the offscouring, is equal in law. How is this to be understood? Shall we assume as the buyer does not accept the offscouring, the same is the case with the depositor? Why? The depository may say: What have I to do with your offscourings? Therefore it must be explained in the reverse. As the depositor must accept the offscouring, the same is the case with the buyer. Is that so? Have we not learned in a Boraitha, R. Johanan said that the loss of unpurified oil is to be accounted to the seller only, but not to the

buyer, because he accepts a *lug* and a half for yeast, without off-scouring? This presents no difficulty. It treats of a case when the money for the oil was paid in Tishri, and he delivered it in Nissan, with the same measure as at the time it was bought (then the buyer must accept the loss, as the oil in Nissan is usually already purified), and R. Johanan speaks of a case when it was paid and delivered in Nissan with the usual measure of the season.

MISHNA *VII.*: If a barrel is deposited for safe-keeping with some one without the owner assigning a separate place for it, if the depository has handled it and it broke while yet under his hand, if his act was for his own advantage he is responsible. If for the sake of the article, he is not. If, however, it broke after it was replaced, there is no responsibility at any rate. If a separate place was assigned by the owner, and the depository handled it and it broke, he is responsible for it at any rate, provided he has replaced it for the sake of the article.

GEMARA: This Mishna, which states that there is no responsibility if it broke after he replaced it, even if it was for his own advantage, is in accordance with R. Ismael, who said elsewhere that no knowledge of the owner is necessary for the return of a lost article; but if so, why then only when a separate place was not assigned to it? The same should be the case even when it was assigned? Yea! but it is to be explained thus: Not only when a place was assigned by the depositor, and the depository put it into the same, he is free; but even if no place was assigned, if only the depository returned it to the place where it was before, he is also free; but if so, how is to be understood the latter part of our Mishna in case a place was assigned by the depositor? This is in accordance with R. Aqiba, who said that the knowledge of the owner is needed. And the same interpretation of the first part is to be used here also; that is, not only if a place was not assigned, but even if it were assigned, he is nevertheless responsible. But is it right that the first part should be in accordance with R. Ismael and the latter part with R. Aqiba? Yea! as R. Johanan said: "He who will interpret to me our Mishna in accordance with one of the two above Tanaim, I will carry his clothes for him to the bath-house." R. Jacob b. Abba, however, explained it before Rabh that he took the same with the intention of robbery, and R. Nathan b. Abba, before the same, that he took it with the intention of using a part of it, (and although he has not used it as yet) it is nevertheless

considered already his property and he is responsible for it.* In which point do Jacob and Nathan differ? In the law of "stretching his hand" (Ex. xxii. 10): If using a part of it is needed, or the intention alone makes him liable, although he has not touched it as yet. According to Jacob he is not liable unless he has used some, and according to Nathan the intention only suffices. R. Shesheth opposed (both statements). "Does then the Mishna state he took it? It states he handled it only." Therefore he explained it that the handling was for the purpose of reaching pigeons, which were on a higher place, by standing upon the barrel, and he holds that borrowing an article without permission of the owner is considered robbery; hence he acquired title to it. And by such an interpretation the whole Mishna can be explained in accordance with R. Ismael, and the latter part, in case the place was assigned by the depositor, treats when the depository has replaced it not in its assigned place. R. Johanan, however, maintains that, from the expression of the Mishna, replaced is to be understood that he put it at the very same place (and therefore his above statement). It was taught: "Rabh and Levi, one of them holds that stretching his hands means that he used a part of it already, and the other one holds that the intention only suffices, and from the explanation of Rabh in a Boraitha, further on, it may be understood that Rabh is the one who holds that the intention only suffices. The Boraitha states as follows: "A shepherd, who left his flock, and in the meantime a wolf or a lion damaged it, he is free (provided it was not a neglect of duty). If, however, he placed his cane or his bag upon the animal, which was damaged by the above wild beast he is responsible; and in the discussion, why such a law? It was explained in the name of Rabh that he struck it with his cane and it ran away." Now, did he take anything away from the animal? Hence it is to be inferred that he holds that the liability of stretching his hands needs not any using or diminution of the article. But perhaps Rabh means that he struck it so hard with his cane that it becomes lean (hence it is considered a diminution), and it seems so from the expression, he struck it with his *cane;* hence Rabh holds that to the above liability using is needed, and Levi is the one who holds it needs not. Said R. Johanan in the name

* This complicated paragraph is explained by Rashi at length, but notwithstanding his interpretation it remains complicated and seems to us of no importance. We, therefore, have translated almost literally without any explanation, as every student should be able to interpret it according to his own understanding.

of R. Jose b. Nehoraï: Peculiar is the stretching of hands, which reads in regard to a bailee for hire in connection from the same expression, which reads in regard to a gratuitous bailee. But I say that it is not peculiar. (Says the Gamara:) According to R. Jose, What is the peculiarity? He maintains this expression should not be written in the case of a bailee for hire, and it should be deduced from the case of a gratuitous bailee thus: A gratuitous bailee, who is not responsible for theft and loss, is responsible for stretching of hands. A bailee for hire, who is responsible for the former also, so much the more should he be responsible for the latter act. Why then is it written separately? The peculiarity is that he is responsible, even for the intention. And R. Johanan, who said: I say it is not peculiar, bases his theory on the ground that the above *a fortiori* conclusion is to be controverted thus: A gratuitous bailee is in some respects more rigorously held in a case where he claims stolen, and must pay the double amount if thereafter it was found that it was not so, which is not the case with the bailee for hire. He, however, who does not use the objection, maintains that the principal amount without an oath (which the law prescribes to a bailee for hire) is more rigorously held than the double amount with an oath.

Rabha says: "If the expression of stretching hands would not be written in the both above-mentioned cases, it could be deduced from the case of a borrower. A borrower who has stretched his hands on the article with the permission of its owner is, nevertheless, responsible, even for an accident; both the above-mentioned cases, which treat of those who have stretched their hands without the permission of the owner, so much the more should they be responsible. Why, then, is it written, one of them, to teach that the intention of stretching hands without using suffices; and the other one, that one shall not say that the rule: it is sufficient for a deduction, to apply the law of the case from which it is deduced, in the very same manner, but not more rigorously? And as a borrower is not responsible when it happened in the presence of the owner, so also should be with both mentioned bailees, that if they have done so in the presence of the owner, they should be free (therefore the repetition, to teach that in this case it is not so).

MISHNA *VIII.*: If one has deposited money for safe-keeping, and the depository tied it and carried it on his shoulder, or he gave it to his son or daughter, who were not as yet of age, or he

did not lock it safely, he is responsible for carelessness. If, however, he was careful with it, as it is required of a bailee (and nevertheless an accident happened), he is free.

GEMARA: It is correct in all cases mentioned in the Mishna, that he is responsible for carelessness, but in the case that he tied it and carried it on his shoulder, why is this considered careless? What better could he do? Said Rabha in the name of R. Itshak: It is written [Deut. xiv. 25], "and bind up the money in thy hand," which means, although it is "bound up," it shall nevertheless be in his hands. R. Itshak said again: That the above cited verse intimates that one shall manage so that his money shall always be in his hands. And he said again: It is advisable for one that he shall divide his money in three parts, one of which he shall invest in real estate, one of which in business, and the third part to remain always in his hands (as it may happen that he will need cash for a profitable transaction). The same said again: Usually blessing does not occur but in things which are not before the eyes, as it is written [Deut. xxviii. 8]: "The Lord will command upon thee the blessing in thy storehouses" (which are not continually before the eye). Similar to this, it was taught by the disciples of R. Ismael. The rabbis taught: "He who is going to measure the grain in his barn, he may say, It shall be thy will, O Lord our God, Thou shalt send blessing to the labor of our hands. When he begins to measure, he may say: Blessed may be He Who sendeth blessings upon this heap. If, however, he prayed after measuring, his praying was in vain, because blessing does not occur on things which are weighed, measured, or counted, but on things which are not before the eyes, as it is written (as the above cited verse)."

Samuel said: "Nothing is considered safety with money, unless it is hidden in the ground." Said Rabha: "Samuel admits that if it was in the twilight of the eve of Sabbath, that the rabbis would not trouble him to do so. If, however, after the Sabbath departed, and he had time to hide it, and he did not do so (and in the meantime something occurred), he is responsible, unless he was a young scholar who thought, probably, I will need money for the benediction of the Habhdala. It happened that one deposited money with his neighbor, who hid it in a hut made of branches, and it was stolen. When the case came before R. Joseph, he said: "Although concerning fire, it is a wilful carelessness; concerning thieves, it is considered safe; and there is a rule that if, finally, it was an accident, although it was started in

neglect, there is no responsibility. The Halakha, however, prevails, that in such a case there is responsibility."

It happened that one deposited money with his neighbor, and when he demanded the money, the depository said: I do not know where I put it; and Rabha made him pay, declaring that such an answer is considered wilfulness. It happened also that one deposited money with his neighbor, and he gave it to his mother for safe-keeping. She put it in a χαρταλος (a kind of box), and it was stolen. When the case came before Rabha, he was considering how to decide: Should we make him pay, he may say, he who gives an article for safe-keeping does so with the condition that the depository may save it by means of his family. Shall we make his mother pay, she may say, my son did not inform me that the money was not his. If I were aware of it, I would have buried it; and shall we make him pay because he did not tell his mother? He may say, on the contrary, I have done so, because I thought if she would think it is my money, she would take more care of it; therefore, he decided that he shall swear that he gave it to his mother; and she shall swear that she put it in the above-named box, and it was stolen, and then both shall be free. There was a guardian of orphans, who bought an ox for the orphans and transferred it to the shepherd. The ox had no teeth and could not eat, and finally it died. And Rami b. Hama considered how to decide: Shall we make the guardian pay, he may say, I transferred it to the shepherd, what could I do more? And shall we say the shepherd shall pay, he may say, I did my duty. I have put it between the oxen, and food was given to it; how could I know that it could not eat? [Let us see: the shepherd is considered a bailee for hire of the orphans, was it not his duty to investigate? If there would be a damage to the orphans, it would indeed be decided so; but the case was, that the orphans did not suffer any damage, as they found the owner of the ox and collected the money which was paid to him for it. Who, then, is now the plaintiff? The owner of the ox, who claims that he was not informed of the case. Of what should he be informed (did he not know that his ox had no teeth and the act of selling was a fraud)? It speaks of a speculator whose business is to buy and sell oxen.] The decision of Rami b. Hama was, that the speculator should swear that he was not aware of it, and then the shepherd must pay the value of cheap meat.*

* Rashi says: I wonder where Rami's decision is taken from. The shepherd was surely not the bailee of the speculator. It seems, however, to him, that

It happened one deposited a bundle of hops with his neighbor, who owned a similar bundle of the same, and told his employee to put the hops in the beer, from his own bundle, but the employee took them from the other one. When the case came before R. Amram, he was considering how to decide this case. Shall the depository be made to pay? He may claim, I told my employee to take from my own. Then should the employee be made to pay? He may claim, my employer did not tell me not to touch the other bundle, and I thought that he only showed me that he owned hops, and it was no difference from which bundle I would take. [But what damage did the depository sustain? Even if he paid for the hops used, he has in exchange his own. Said R. Sama b. Rabha: "The case was, that the beer was spoiled by the bad hops." And R. Ashi said: "The hops were good, but mixed with thorns, and the beer was not improved as it should be." And the employer claimed the damage was caused by the bad quality of the hops, and wanted the difference of the value for not improving, and it was decided he should get it.]

MISHNA *IX.*: Money deposited for safe-keeping with a money-changer, if it was tied up, he must not use it, and therefore, if lost, he is not responsible. If open, he may use it, and is responsible if lost. With a private person, however, he may not use it under any circumstances, and is therefore not responsible for loss. A storekeeper is considered in this respect a private person, according to R. Meier. According to R. Jehudh, however, he is considered a money-changer.

Rami based his decision upon the Mishna II. in this chapter, where R. Jose declared that the cow must be returned to its owner, although the owner has not any business with the borrower, and so was the Halakha decided. Now, as in that case the hirer suffered nothing, as the law makes him free of an accident, nevertheless, because he has a claim against the borrower, it is decided that the owner of the cow may substitute the hirer and collect the money for his claim from the borrower. The same is the case here; for if the orphans would suffer any damage, they would surely collect it from the shepherd, who was their bailee. Now, when they did not suffer any damage, the speculator substitutes them. However, such moderation could not be made if the orphans would suffer any damage, as the orphans, who are not yet of age, could not relinquish what is due to them; but now when the speculator substitutes them, and the claim of wilful carelessness could not be made by the speculator directly, because the shepherd claims that he had done all his duty, etc. (see text); hence the moderation, he shall pay the value of cheap meat and the skin shall be returned to him. Tosphat, however, maintains in the name of R. Tam, that this decision was not a moderation at all, but a strict law, for if the speculator would be informed, he would have slaughtered the ox immediately, as he could not wait with it for the market-day and sell the meat at a low price.

GEMARA: If the depositor names the sum contained in each bundle, why then shall the money-changer not use it? (Every one knows that a money-changer needs always money for his business, and one who deposits money with him does so usually with the intention that it shall be used.) Said R. Assi in the name of R. Jehudh: "Read in the Mishna that it was both tied up and sealed." R. Mari questioned: "How is the law, when it was tied up with an unusual knot? (Should it be considered as a seal or not?)" This question remains undecided.

"*If open, he may use it,*" etc. Said R. Huna: "Even if it was robbed." [But did not the Mishna state *for loss?* as Rabha explained above, page , that loss means such an accident as, *e.g.*, his ship was lost at sea.] R. Na'hman, however, maintains that in such case he is not responsible. Said Rabha to him: "According to your theory we see that the money-changer is not considered a borrower (who is responsible even for an accident); then must he not be considered also as a bailee for hire (hence he should not be responsible for theft)?" And he answered: "I agree with you, that because he has a right to use the money for business, to derive benefit from it, this makes him a bailee for hire." R. Na'hman objected to R. Huna's statement from the following Tosephta: "'Money deposited with a money-changer, if tied up, must not be used, and in case the money was from the sanctuary and the money-changer used it, the transgression is not imputed to the treasurer of the sanctuary. If, however, open, it may be used, and if the money-changer used it, the transgression falls upon the above-named treasurer.' Now, according to your theory that the money-changer is responsible, even if it was robbed by force (consequently, with the act of depositing, it goes from under the control of the treasurer, and is from now on under the control of the money-changer, hence the transgression was already done by depositing). Why then does the Tosephta state that only when the money-changer used it, the transgression falls upon the treasurer?" And R. Huna answered: "Indeed, the same is the case even when the money-changer has not used it, and the expression used in the latter part is not to be taken in particularity, but it is mentioned because of the same expression in the first part?"

MISHNA *X.*: A depository who stretches his hand for the bailment, the school of Shamai makes him liable from the time he touched it for increase and decrease, so that if, thereafter, it becomes lower in price the depository must suffer; and the same if it increases, he must transfer the increase to the owner. The

school of Hillel makes him liable from the time he used it. R. Aqiba, however, maintains that he must pay the value at the time he is summoned.

GEMARA: Rabba said: "If one robbed a barrel of wine, the value of which was one zuz at that time, and thereafter it increases to four zuz; if he breaks it or drank its contents, he must pay four zuz. If, however, it breaks accidentally, he must pay one zuz only. Why so? Because, if it would still be in existence, he would be obliged to return it; consequently, the guilt came with the drinking or breaking, when the value was already increased; and there is a Mishna that all robberies must be counted from the time they were perpetrated; but if it was broken without his fault, so that after its increase he had done nothing, he pays one zuz only, as his liability begins from the time he took it, and then it was worth only one zuz. An objection was raised from our Mishna: The school of Hillel makes him liable, etc. What is meant by the expression, *from the time he used it?* Shall we assume that by the word *used* is meant that he had given it away, and at that time the value of it was decreased? Is there one Tana in the whole college that holds so? Is it not stated in the Mishna that all robberies must be paid at the time they were perpetrated, and if increased at the time, then Beth Hillel's decision would be the same as Beth Shamai? Hence the expression, "at the time it was used," means when it was taken from the owner. And the above schools differ in case of an increase. According to Beth Shamai, if it increased at the time he had given it away, he must pay the increase also; and according to Beth Hillel, it must be appraised only at the time it was robbed; and if so, then Rabba's decision is in accordance with that of Beth Shamai? Rabba may say that the schools do not differ with an increase, but with decrease. And the point of difference is this: The Beth Shamai holds that the liability comes with the stretching out of his hands, although he has not used it as yet; consequently, the decrease occurs while under his control. And the Beth Hillel holds that using is necessary; consequently, it is considered under the control of the owner until the depository makes use of it, and if a decrease occurs while it was not as yet used by him, it is counted under the control of the owner. Then Rabha's decision above (page 101), that stretching out the hands needs not the *using*, would be in accordance with the Beth Shamai; therefore this point of their difference must be explained thus: The Beth Shamai holds that the increase of a

robbed article belongs to the owner, and according to Beth Hillel, it belongs to the robber. (And the Mishna treats of a case, *e.g.*, a gravid cow or a sheep unshorn, according to Beth Shamai, it belongs to the owner; and according to Beth Hillel, it belongs to the depository.) R. Meier and R. Jehudah differ in the same case (Baba Kama, page), and it seems to be so, as the Mishna states that the school of Shamai holds that he must suffer increase and decrease; and the school of Hillel, at the time it was used. (From the expression increase and decrease, and not dearer and cheaper, it is to be inferred that it treats of a case similar to the above-mentioned explanation—Rashi.) Infer from this that so it is.

R. Aqiba, however, maintains, etc. Said R. Jehudah in the name of Samuel: The Halakha prevails according to R. Aqiba. He, however, agrees that in case there were witnesses at the time of robbery it must be paid. Why so? Because it is written [Lev. v. 24]: "To whom it appertaineth shall he give it, on the day when he confesseth his trespass." And as there were witnesses, the trespass is counted from the time it was done. Said R. Oshia to R. Jehudah: "Rabbi, thou sayest so! So said R. Assi in the name of R. Johanan: R. Aqiba insists in his decree even if there are witnesses, and his reason is taken from the same verse cited, as only the court made him know of his trespass." Said R. Zeira to R. Abba b. Papa: "When you will ascend to Palestine, make thy way around the steps of Zur and visit R. Jacob b. I'di and question him whether he heard from R. Johanan about R. Aqiba's decision above, and if so, the Halakha prevails." (He did so) and the answer was: "So said R. Johanan, the Halakha prevails in accordance with R. Aqiba always."

What is meant always? Said R. Ashi: "It means even when there were witnesses. It can also be said that it means the Halakha prevails in accordance with him, even when the depository returned it to its former place and then it broke: against R. Ismael's theory that the knowledge of the owner is not necessary (*i.e.*, that R. Aqiba makes him responsible if it breaks, while the owner was not as yet aware that the article was returned), and so the Halakha prevails. Rabha, however, said: "The Halakha prevails in accordance with Beth Hillel."

MISHNA *XI.*: If one intends to use a bailment deposited in his control and said so in presence of witnesses, the liability follows immediately; so according to Beth Shamai. Beth Hillel, however, maintains he is not liable unless he has acted so, as it

is written [Ex. xxii. 10]: "That he has not stretched out his hands against his neighbor's goods." If he has bent the (deposited) barrel, and took of it a quarter of a *lug*, and in the meantime it broke by accident, he must pay only for the quarter of a *lug*. If, however, he picked up the barrel and took the above-mentioned measure, and in the meantime it broke, he must pay for the whole barrel.

GEMARA: Whence is all this deduced? From the following, as the rabbis taught: "It is written [ibid., ibid. 8]: 'For all manner of trespass.'" From this the Beth Shamai deduces that he is liable for the intent as well as for the act itself. The Beth Hillel, however, maintains that there is no liability unless he stretches out his hands, as the above-cited verse (10) reads. Said the Beth Shamai to the Beth Hillel: Is it not written, "for all trespasses"? And they answered: But is it not written, "if he had not stretched out his hands"? The verse, however, cited by you is to be explained thus: Let one say that he is liable only when he himself committed this act, but not if he did so through his slave or messenger; therefore it is written, of all trespasses.

If one bent the barrel, etc. Said Rabha: "It is so in case it breaks. If, however, the wine became sour, he must pay for the whole. Why so? Because his act causes the damage (for if it were full, no air could enter to spoil it)."

If, however, he picks it up, etc. Said Samuel: "The expression, and he took of it, is not to be taken literally, for it means with the intention of taking out, and he is liable even if it broke before he did take." Shall we assume that Samuel holds that "using" is not needed for the liability of stretching hands? It may be said this case is different, as one-quarter of a *lug* may cause the spoiling of the whole wine, as explained above.

R. Ashi questioned: "If one picked up a deposited packet with the intention of taking out of it one *dinar*, what is the law? Shall we assume that wine only is saved when it is full, but money can be saved at any rate, or a full packet of money is safer than one which is not filled up (as from a packet full of money a coin cannot easily drop)? This question remains unsettled.

CHAPTER IV.

LAWS RELATING TO TITLE, REAL AND PERSONAL; FRAUD, WHAT CONSTITUTES FRAUD AND THE CIRCUMSTANCES SURROUNDING FRAUDULENT TRANSACTIONS, ETC.

MISHNA *I.*: If one bought gold and silver coins together and made a drawing on the gold ones, title is also given to the silver ones, but not *vice versa*. The same is the case with copper and silver coins: the drawing on copper ones gives title to the silver, but not *vice versa*. If one has drawn coins which are out of circulation, having bought them together with good money, the sale is valid for both; if, however, he took possession of the good money, which was bought together with those out of circulation, the latter are not considered his unless he takes possession of them also. The same is the case if one buy uncoined with coined money, to acquire title to both he must take possession of the uncoined. If, however, he did so with the coined money, the uncoined is not considered bought. Movable articles give title by drawing them, also for the coins bought with them, which is not the case with drawing the coins only. All movable articles give title by drawing one of them. How so? If one made a legal drawing of the article, although he has not paid the money as yet, he cannot rescind. If, however, he paid the money, and did not make a drawing of the article, he may rescind. But it was said that He who has punished the generation of the flood and the generation of the scattered, whose tongues were confused (Gen. xi. 7), He will punish him who does not keep his promise. R. Simeon, however, maintains that he who has the money in his hand has the preference (even in the former case).

GEMARA: Rabbi taught his son R. Simeon: "Gold coins give title to the silver." And the son rejoined: "Rabbi, in your youth you taught us that the silver ones give title to the gold ones, and now in your old age you teach that only the gold ones give title, but not the silver ones." [The Gemara questioned what was the reason then? In his youth he taught that because gold is more valued it is considered a circulating coin, and silver, which is not so valued, is considered an article of trade, and,

therefore, if he took possession of the article, title to the gold one is acquired; and in his old age he came to the conclusion that because silver is a circulating coin used all over the world, it is considered a coin, and gold, which is not so much in circulation, is considered an article of trade: so that by drawing it the silver coins are bought.]

Said R. Ashi: "It seems to me that his opinion while in his youth is more correct, as our Mishna states that copper gives title to silver; now if you are of the opinion that silver in comparison with gold is considered an article of trade, it is correct when it states that copper gives title to the silver, as it is considered an article of trade only in comparison with gold, but in comparison with copper it is considered a circulating coin. But if you say that silver is considered a circulating coin, even in comparison with gold, is it then necessary to teach that it be considered so in comparison with copper? Is this not self-evident? (Hence his opinion while in his youth is more correct.)" The Gemara, however, maintains that this statement cannot be considered an evidence, as the teaching that copper gives title to silver was needed in case where silver is considered a circulating coin, even in comparison with gold, because it may be said that in the places where copper coins are used they are more in circulation than silver; hence they cannot be considered articles of trade in comparison with silver; therefore he comes to teach us that although in some places it is as stated above, in the majority, however, silver is more in circulation than copper, and is considered a circulating coin everywhere. And R. Hyya is also of the opinion that silver is always considered a circulating coin, and this is to be understood from the following: "It happened that Rabh borrowed dinars from the daughter of R. Hyya; thereafter the dinars increased in value, and when Rabh came to question R. Hyya, he was told to pay with the best dinars, and this decision shows that he held that silver is the right circulating coin; for if it would be considered an article of trade in comparison with gold, it should be considered as if one had borrowed a *saah* of fruit when it was cheap, and returned the same measure when it was dearer, which is not allowed because it appears usurious." (Says the Gemara:) This also cannot be considered as a real support for the above statement, as Rabh at the time he borrowed the dinars from R. Hyya's daughter possessed his own dinars, and in such a case it is analogous to the case stated in a Boraitha: "If one says, Lend me a *saah* of grain, I shall return it to you when

my son will arrive home, as he has the key to my granary, he may return to the lender the same measure, even if it became dearer, because the lender acquired title to it at the same time that he delivered to him the required articles."

Rabha said: "The Tana of the following Mishna holds that gold is considered the right circulating coin. The coin *parutha* mentioned in the Talmud is one-eighth of an Italian *Issar*. [To what purpose is it stated? Concerning the law of marriage, that less than a parutha is not considered.] An *Issar* is one twenty-fourth of a silver dinar. [To what purpose is this? Concerning general transactions, that a silver dinar must be of this value, as it is stated further on. And a silver dinar is one-twenty-fifth of a gold one. This is taught concerning the law of redeeming the first-born son [Ex. xiii. 13].]"

Now, if the gold dinar is considered a coin which is always of the same value, it is correct to say that the Tana named this coin for the purpose of redeeming, but if it would be considered an article of trade which increased and decreased in price, would the Tana then name it for this purpose? Is it not a fact that at the time of increasing the priest would give him change of it, and at the time of decreasing the father would have to add the difference? Hence it is inferred from this that it is considered a standard coin.

It was taught: Rabh and Levi: One holds that the law of exchange applies to a coin also, and the other holds that it does not (*i.e.*, although it is said above by drawing the coin, the article is not considered sold unless by drawing the article itself, this is only when it was done in the way of buying and selling, but if it was done in the way of exchange, *e.g.*, if one says: I have an article of so and so, and would like to exchange it for this coin, as soon as he takes possession of the coin, title is acquired to the article by the other party). Said R. Papa: "The reason given by him who holds that a coin cannot be exchanged is that the face of the coin is changeable by the government, and to acquire title by Sudarium, a standard coin is needed. An objection was raised from our Mishna, gold coins give title to the silver one. Is it not to be assumed that it means in exchange? Hence we see that the law of exchange applies to a coin also. Nay, it means in the way of buying and selling for money. If so, it should be stated that one who has drawn the gold one is liable for the silver one? Why the expression, gives title? Read, then, he is liable, etc. And it seems that so is the correct explanation from the latter part, which states that silver coins do not give title to the gold

ones; and this is correct only when it treats of selling for money, as it was said that gold is considered an article of trade, and silver a circulating coin, and the drawing of a coin does not give title to the article; but if you will say that it treats of exchange, then both articles should give title, each to the other. And also from the following Boraitha: "Silver does not give title to gold; also, if one sold twenty-five silver dinars for one gold dinar, although he made a drawing on the silver, the gold is not considered his, unless he draws the gold." And this also is correct only by selling; but if an exchange, title ought to be given. But if it treats for money, how is to be understood the first part of this Boraitha? Gold gives title to silver; also, if one has sold a golden dinar for twenty-five silver ones, the silver belongs to the seller anywhere it may be found, provided the buyer made a drawing of the gold. This would be correct if it treated of exchange, but when it speaks of an ordinary sale, it should state that the *buyer is liable* for it instead of "the silver belongs, etc." Said R. Ashi: "It treats of a sale for money, and the expression, wherever it is to be found, means the place where the coin was made; *e.g.*, if he promised to furnish new coins, he cannot furnish the old ones, although they are more valuable, because the buyer may say, I need them for safe-keeping, and new ones will preserve their surface better than old ones." R. Papa said again: "Even according to him who holds that the law of exchange does not apply to a coin, means that with the coin itself exchange cannot be made, but nevertheless title can be acquired to it by drawing the exchanging article, similar to articles of fruit, in accordance with R. Na'hman's theory, which is, that although exchange cannot be done with themselves, title, nevertheless, can be acquired to it by drawing the exchanging article, and the same is the case with a coin also. This statement was objected to from a Mishna (Maassar Sheni, IV., 5), and the conclusion was that the law of exchange does not apply to a coin under any circumstance; and R. Papa himself retracted from his statement (cf. Baba Kama, p. 236). And so also said Ula, R. Assi, and Rabba b. b. Hana in the name of R. Johanan, that the law of exchange does not apply to a coin. R. Abba objected to Ula's statement from the following: "He whose drivers and employees were summoning him for their wages, and he said to a money-changer, Give me change for a dinar, and I will give you from the money I have at home a good dinar and a *tressith*; if he really possesses money at home, this may be done, but if he has not, it is prohibited, as it appears usurious. Now, if it is borne in mind that there is an exchange with a coin,

then this act is a loan only, and should be prohibited?" Ula was silent. Said R. Abba to him: "Perhaps the money of which the Boraitha speaks was uncoined, so that they are considered articles of trade, which may be acquired by exchange." Said Ula to him: "You are right, and this is to be inferred from the expression, a *good dinar*, and not *a* dinar and a *tressith*, which means, from uncoined money I have at home I will give you the *value* of a *dinar* and a *tressith*." R. Ashi, however, said: The Boraitha treats of coined money, and, nevertheless, it does not contradict the above statement, for as soon as he has the money home, it is to be like the case where one said, Lend me until my son will come with the keys, stated above.

"*All movable articles*," etc. Said Resh Lakish: "Even a purse filled with money may be acquired with another one equal to it." And R. Ah'ha explained his statement, that he speaks of dinars in one purse which were abolished by the ruler, and in the other purse, which were by the country; and both cases are needed, for if he would speak of those which were abolished by the ruler, one might say, because they are useless anywhere, they may be exchanged; but that of the country, which can be used in another country, they are still considered coins in circulation, and the law of exchange does not apply. And if he would speak of the latter, one might say, because they are useless at any rate in this country, they are not considered any more as circulating coins; but if prohibited by the ruler, but privately still circulated, they are yet considered coins; therefore both statements.

Rabba in the name of R. Huna said: "If one were holding some coins in his hand and said: Sell me your articles for the money I have in my hand, and the other agrees, and accepts the money, without asking the amount of it, the buyer acquires title to the article; and if, however, the article was in value a sixth less than the amount, the sale is null and void, because it is fraudulent. The title is acquired to the article because the seller was not particular as to the money; it is considered as an exchange, and the law of fraud applies here, because of the expression, 'sell me,' which means it shall be the value of the amount I hold in my hand." R. Abba in the name of the same authority, however, said: "If one said, Sell to me for the money I have in my hand, no cheating can be claimed."

It is certain that when the seller is not particular as to the amount, the buyer acquires title to the article, even before he drew it, as it is considered an exchange, in which the drawing of

one article suffices for the others also. But what is the law if it is an exchange, and they are particular as to the values—is the drawing needed in both articles or does one of them suffice? Said R. Ada b. Ah'ba: Come and hear: If one was holding his cow in the market, and his neighbor questioned him, Why are you holding the cow here? He answered, I need an ass. Replied the other, I have an ass, and can furnish you with it, but would like to know the price of your cow. The price is so-and-so. And what is the price of your ass? So-and-so; and they agree. Then the owner of the ass made a legal drawing of the cow, but the ass died before the owner of the cow made the drawing; the title to the cow is not acquired by the owner of the ass; hence we see that, although in a case of exchange, as soon they are particular as to the value, title is not acquired unless the drawing of both articles occurs. Said Rabha: "Does then the law of barter apply to fools who are not particular as to the value? All exchanges are very particular, and nevertheless title is acquired by drawing of one of the exchanged articles, and the above Boraitha treats of a case where the exchange was made of an ass for a cow and a sheep, and the owner of the ass made a drawing on the cow only, but not of the sheep, which cannot be considered a legal drawing."

The Master said: "If one said: Sell me for this amount, title is acquired, and nevertheless the law of fraud applies. Shall we assume that R. Huna holds that coins may be exchanged? Nay! R. Huna holds with R. Johanan, who says that, biblically, money gives title, but for what purpose was it so stated that drawing gives title? This was enacted for the purpose that one might say, Your property was destroyed by fire in my attic." (*I.e.*, that R. Huna holds that there can be no exchange with coins, and his above statement is made on the basis that with the money he acquired title, by using the word "sell me," and there is not any need of drawing, because the drawing was enacted by the sages to prevent damage to buyers, who pay the money without taking possession of the article; and if a fire may happen while it is yet in the house of the seller, he will not care to save it, as it does not belong to him any more, therefore the sages enacted that the seller is responsible for the property unless the buyer has made a drawing of it.) And the enactment was made only for a usual selling and buying, but for such a sale as R. Huna stated, which is unusual, this enactment does not apply. Said Mar Huna, the son of R. Na'hman, to R. Ashi: "You taught so;

we, however, have taught plainly, and so said R. Huna, that no exchange is to be made with a coin. How should an exchange of coins be confirmed? Rabh says, with the property belonging to the buyer,* because it is more pleasing to the buyer that the seller shall receive a present from him † for the purpose that he shall decide to transfer the property to him with a good will; and Levi said, with the garment of the seller, as will be explained further on." Said R. Huna of Daskarta to Rabha: According to Levi's theory, that it must be done with the garment of the seller, for he may transfer previously to him real estate with this garment, which shows that the title to real estate can be acquired with personal property, and there is a Mishna which states the contrary: Personal property can be transferred with real estate. And he answered: If Levi would be here, he would strike your face with fiery lashes. Do you think that the garment gives title? For the pleasure he feels on being presented with the article, he concludes to transfer the goods to the other.

The former Amoraim are in accordance with the Tanaim of the following Boraitha (who differ also on this point): It is written [Ruth, iv. 7]: "Now this was formerly the custom in Israel at a redeeming and at an exchanging, to confirm anything, that a man pulled off his shoe and gave it to the other, and this was the manner of testimony in Israel." "Redeeming" means selling, and so it reads [Lev. xxvii. 20]: "It shall not be redeemed any more." "An exchanging" means taken literal, as it reads [ibid., ibid.]: "He shall not alter it nor change it." "To confirm, . . . pulled off his shoe and gave it to the other." Who has given to whom? Boaz gave to the redeemer. R. Jehudah, however, says: "On the contrary, the redeemer gave to Boaz." There is a Boraitha: "This ceremony can be done with any article, even if its value is less than a parutha." Said R. Na'hman: "It must be a utensil, but not fruit." R. Shetheth, however, maintains that this may be done with fruit also. What is the reason for R. Na'hman's statement? Because in the Scripture one reads "shoe," which is a utensil. R. Shetheth, however, bases his opinion upon "confirming anything." And

* It was already explained above that in ancient times the custom of buying and selling was that either the buyer or the seller would take a garment in his hand, and the other party would grasp the size of a span of it with his hand, which is known under the expression *Sudarium*—hence the question in the text.

† The ceremony signifies that the holder of the garment gives it as a present to the other.

what would R. Na'hman say to this? To confirm anything, which was done by the ceremony with the shoe. But according to R. Shetheth, what does the word "shoe" signify? As the shoe is a complete article, so all other articles with which this ceremony is to be performed must be completed, to exclude fruit, which is not fit for a Sudarium.

R. Shetheth b. R. Idi said: According to whom do we write in our legal papers, 'with an utensil which is fit to confirm with'? In accordance with the opponents of R. Shetheth, who said that the ceremony may be done with fruit also, and the opponents of Samuel, who said that a vessel made of *maroka* (baked ordure) may be used for this purpose, and also to deny Levi's theory, which is "with the property of the seller"; we say to confirm "with," but not to give title with it.* R. Papa, however, said: "The expression, with a vessel, means to exclude a coin, which is fit." Said R. Zbid, and according to others R. Ashi: "To exclude such vessels of which no benefit must be derived (as, *e.g.*, devoted to idolatry), there is no necessity of excluding *maroka*, which all agree it is not fit for that purpose."

"*Uncoined money*," etc. How is this to be understood? Said R. Johanan: "*I.e.*, a coin which is counterfeit." And he is in accordance with his theory elsewhere, that R. Dossa and R. Ismael said one and the same thing. R. Dossa in a Mishna (Idioth, I., 2): Second tithe must not be exchanged for a counterfeit coin. And R. Ismael of the following Boraitha: It is written [Deut. xix. 25]: "Then shalt thou turn it into money, and bind up the money in thy hand"; to include all the money which can be bound in the hand, so is the dictum of R. Ismael. R. Aqiba said that it includes all coins which have an imprint of the ruler's face on them.

"*How so, if one made a legal*," etc. Said R. Johanan: "Biblically, money paid gives title; why, then, was it said that drawing is needed? For fear that a fire may occur in the house of the seller, where the bought article is placed; and if it is still considered under his control he will trouble himself to save it, but if it would be considered under the control of the buyer he will not care to save it. Resh Lakish, however, said that the drawing is prescribed by the Scripture, viz.: It is written [Lev. xxv. 14]: "And if thou sell aught unto thy neighbor, or buy aught

* As it is explained above, the buyer makes a present of it to the seller, etc., which cannot apply to the seller.

of thy neighbor's *hand*," signifies a thing which goes from hand to hand. R. Johanan, however, says that "hand" excludes real estate, that the law of fraud does not apply to it. Resh Lakish, however, maintains that if it would be as R. Johanan said, the Scriptures would read in the case of selling only. Why is then the case of selling repeated? To verify my statement. An objection was raised to Resh Lakish's statement from our Mishna: "R. Simeon, however, said that he who has the money in his hand has the preference," which means that the seller may retract, but not the buyer; and this is correct only when money paid gives title biblically, therefore the preference is given to the seller that he may retract, in case the article will become dearer for his purpose he should save it from an accident, thinking it is still considered mine, as I may retract and probably the price will be increased; but not the buyer, as the title is acquired with paying the money. But if the money does not give title biblically, why should not the buyer also have the right to retract? Resh Lakish may say, I have nothing to do with R. Simeon's theory, and my explanation is in accord with the rabbis' theory. There is, however, an objection from the latter part. But it was said: He who punished, etc., which would be correct only when money gives title; but if it does not, why should he be punished? Because he retracts his words. Is that so? Have we not learned in a Boraitha: R. Simeon said, although it was said that a garment gives title to a gold dinar, and not *vice versa*, so only is the strict Halakha; but in addition to it, however, it was said that He who took revenge on the generation of the flood, . . . and the people of Sodom and Gomorrah, and on the Egyptians in the sea, He will take revenge on him who retracts his words. And he who is doing business with words only (without money), to him title is not given; however, the spirit of the sages does not please him, and Rabha adds that this is the only punishment for such people, hence we see that word retractors do not stand under the punishments stated above? Yea! They are not under punishment when there were words only, but if there were words with money they are. Said Rabha: "The Scripture and a Boraitha support Resh Lakish. The Scripture, as it is written [Lev. v. 21]: "If he, namely, lie unto his neighbor in that which was delivered to him to keep, or in a loan, or in a thing taken away by violence, or if he had withheld the wages of his neighbor." "A loan" —said R. Hisda, *i.e.*, that the borrower has pledged an article for

his loan (which is then equal to a deposit). "Withheld the wages"—said R. Hisda: This is also in case the employer has separated the amount due to the employee, or the value of it, and told him, from this you will collect your wages. Now, concerning repentance the Scripture reads [ibid., ibid. 23]: "That he shall restore what he had taken violently away, or the wages which he hath withheld, or that which was delivered to him to keep." But a loan is not mentioned. Is it not because there was not a drawing on the article pledged (which was still in the hands of the borrower), and therefore he had not yet acquired title? Said R. Papa to Rabha: "Perhaps it is not repeated because wages is repeated, and this is to be deduced from it as the case is similar?" Answered Rabha: "It treats of a case when the employer already took the amount which was assigned to him and thereafter deposited it again." But is it not the same as a deposit? It tells us of two kinds of deposits. If so, should the Scripture repeat also a loan, and should it be explained similarly that the pledge was returned and again assigned?

If it would be so, then it would be no objection and no support; but as the Scripture did not repeat it, it may be considered a support. But is it indeed not repeated? Have we not learned in a Boraitha that R. Simeon said: "Whence do we know that the verse quoted applies to all that was mentioned in the previous verse? Therefore it is written [ibid., ibid., 24]: 'Or any one thing about which he may have sworn falsely.'" And R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh, said that it intends to add that a loan shall also be returned? It may be, but nevertheless the Scripture did not repeat it plainly, and the Boraitha is as follows: If one has given a coin belonging to the sanctuary unintentionally to a bath-house keeper (for using the bath), he has committed a transgression, although he did not use it as yet. And Rabh explained the Boraitha, that the expression bath-house keeper signifies that only in a similar case, where the giver of the coin has nothing to receive in exchange; but in case he has, he committed no transgression, unless a drawing was made on the receiving article. And so also is R. Na'hman's opinion, that money gives title biblically. And Levi searched in the Boraithas which he compiled himself, and found one which stated that if one gave a coin belonging to the sanctuary to a wholesale dealer as a deposit for goods which he should take later, a transgression is committed (hence we see that money gives title without any drawing). But then the Boraitha contradicts Resh Lakish's above

statement? He may say that this Boraitha is in accordance with R. Simeon of our Mishna.

"*But it was said that He who had punished,*" etc. It was taught: According to Abayi, if he retracts, he ought to be notified that he will be punished by Heaven, and according to Rabha the Mishna means he shall be cursed. He who had punished, etc., shall punish you. Said Rabha: "I base my statement upon the following act. R. Hyya b. Joseph accepted money as a deposit for salt to be delivered afterwards. In the meantime the price of it went up, and he questioned R. Johanan what he had to do, and was told that he must deliver the salt, otherwise he must take the punishment stated in the Mishna. Now, if the Mishna means that he should be notified only, is then R. Hyya b. Joseph among those who must be notified (was he not aware of it)? But even according as you say, that he was to be cursed, is it possible that R. Hyya b. Joseph would take for himself a curse from the rabbis? The case with him was thus: He thought that he had to deliver to him the salt according to the sum of the deposit, but not for the whole amount of the sale, and was told by R. Johanan that with the deposit they had acquired title for the whole amount bought. It was taught: A deposit, according to Rabh, gives title only for the sum it contains; and according to R. Johanan, it gives title for the whole article or articles he had bought. An objection was raised: If one has given a deposit to his neighbor, with the condition that if he should retract, the deposit shall be relinquished; and the other said to him, in case I will retract, I shall double the amount of the deposit. These conditions are to be followed, so is the decree of R. Jose. [And R. Jose is in accordance with his theory elsewhere, that the presumption is that it is a good sale.] R. Jehudah, however, maintains that it is sufficient that he should deliver to him the value of his deposit. Said R. Simeon b. Gamaliel: "This is in case he gave him the money as a deposit, but if it was given to him as a part of the payment, as, *e.g.*, if one sold a house or a field for a thousand zuz, and he paid five hundred zuz as a part of it, title to the article sold is acquired, and he must pay him the balance even after a lapse of many years." Is it not to be assumed that the same is the case with movable property, that the deposit gives title to all the movable property he has bought (so if one of them has retracted, he must accept the above curse "of him who had punished," etc.)? Nay! To movable articles title is acquired only for the sum the

deposit contains, and the difference between them and real estate is, that with the latter title is acquired by money only; the deposit gives title to the whole of it; but to movable articles, with which drawing is required, and even if he would pay for the whole, without any drawing, the possessor of the money has the right to retract (as said above), but he must take the curse in question. Hence title is acquired with the condition that the curse will be borne by him. Then this curse can apply only to the article in value as much as the deposit contains, but not for the amount it was bought (*i.e.*, that if he had delivered it to him for the amount of the deposit, the above said punishment does not apply).

R. Kahana had accepted money for flax which he was to deliver thereafter. In the meantime flax became dearer, and he questioned Rabh what to do, and was told, deliver to them for the sum you have in your hand, as the balance was bought relying on words only, for which a loss of confidence is not to be considered, as it was taught: "'Words,' Rabh said, 'if they are not kept, loss of confidence is not to be considered.' And R. Johanan says it may." An objection was raised from the following: R. Jose b. Jehudah said: Why is repeated [Lev. xxi. 36] "just hin," is this not included in the word "just ephah," ibid., ibid., to instruct you that your Yea (which is the literal translation of *hin*) shall be just, and your Nay shall be just (hence we see that words must be kept)? Said Abayi: "The cited verse signifies one shall not talk with his mouth differently from what he thinks in his heart." (An objection was raised from the Boraitha, "R. Simeon says," etc., p. 118, and the answer was that on this point Tanaim differ.)

But did R. Johanan indeed say so? Did not Rabba b. b. Hanna say in his name that if one said to his neighbor, I will make you a present, he may retract thereafter. Said R. Papa: "R. Johanan agrees that if one promises to make a present of a small amount, no retraction can take place, as the other party relies upon it. It happened that one gave money for poppy, meanwhile the poppy increased in price, and the seller retracted, and told him, I have no poppy, take your money back; and he did not. Meanwhile the money was stolen, and the case came before Rabha. He said: "Because he was told to take his money back, the seller is not responsible, not only as a bailee for hire, but he cannot even be considered a gratuitous bailee." Said the rabbis to Rabha: "Must not the retractor at least take upon

himself the above curse as his punishment?" And he said: "Yea; if he will not give the poppy, he must bear this punishment." Said R. Papi: "I was told by Rabbina that the case was not so, as he was told by one of the rabbis, who was named R. Tabuth, and according to others Samuel b. Zutra was his name, and he was such kind of a man that he would not change his word, even if all goods of the world were to be delivered to him, and he told me: The above case of poppy happened to me. On one Friday I was sitting in my house, when a man came and questioned me whether I have poppy to sell, and I said no; said the man to me, let then this money I have be deposited with you, as it is nearly twilight; and I said my house is yours, put it wherever you like; he did so, and finally the money was stolen, and when he came to complain before Rabha, he was told that by my words, "my house is yours," I did not take any responsibility even as a gratuitous bailee. And when he was asked, did not the rabbis say to Rabha that this man should take the curse of punishment, etc.? he rejoined: This never occurred.

"*R. Simeon said*," etc. We have learned in a Boraitha (in addition to our Mishna), R. Simeon said: "This is in case both the article and the money were in the hands of the seller; but when the money was in the hands of the seller and the article in possession of the buyer, he cannot retract, because he already received the value for the money." Is that not self-evident? Said Rabha: "The case was that the attic of the buyer was hired by the seller, and the article was placed there. In such a case no drawing is needed, as the enactment of drawing was for the purpose that the seller shall trouble himself in case of a fire to save it, which does not apply in this case, as the article was under the control of the buyer, and if a sudden fire would happen the buyer would do all things possible to save it." It happened that one paid for an ass, and before he got hold of it he learned that this ass would be taken away by Parsek the *rufuli*. He demanded the return of his money, claiming he had no need for the ass any more. The case came before R. Hisda, and he decided as it was enacted that the seller may retract, so long as the buyer did not make a drawing of the bought article, so it was enacted that the buyer can also retract, so long as he has made no drawing on it.

MISHNA *II.*: Cheating, which according to law makes the sale null and void, is in case where the sum of which he was cheated counts four silver dinars from the amount of twenty-four silver dinars, which makes a *salah; i.e.*, a sixth of the whole

amount. Until what time may the retraction take place? Up to the time that the buyer can show his article to a merchant or his relatives. R. Tarphon decided in the city of Luda that to avoid a fraudulent sale of eight silver dinars from twenty-four, *i.e.*, a third of the whole amount; and the merchants of Luda were pleased with this decision. When, however, they heard his further decision, that the retraction may take place during the whole day, they requested R. Tarphon that he should leave them with the old decision of the sages, and so they returned to the decision of the sages.

GEMARA: It was taught: Rabh said: "The Mishna means the sixth of the correct price of the article." Samuel says: "It means also a sixth of the amount" (the illustration further on). (Says the Gemara:) If one has sold an article of six dinars for five, or for seven, both agree that the price is to be considered; and in both cases there is a cheating of a sixth. If, however, he sold an article of five dinars for six, or seven for six, according to Samuel, who said that the sum of the money must also be taken in consideration, it is considered cheating, as the price was six, and there was cheating in one dinar. According to Rabh, however, who says that the correct price of the article must be considered, if he took six for five, then the cheating was of a fifth, and the sale is void; and if seven for six, then the cheating on the part of the seller was less than a sixth, the sale is valid, and the dinar is considered relinquished. The reason of Samuel's statement is that the sale is considered void only when there is more than a sixth both in the price of the article and in the money paid; and the same is the case with relinquishing, that there is less than a sixth of both; but if there is a sixth part of one of the two, it is considered cheating, and the money which was paid in excess, or less, must be returned by the parties.

There is a Boraitha which supports Samuel, as follows: "He who was cheated has the preference. How so? If one sold an article which was worth five for six, who was cheated? The buyer; he had the preference of choosing; if he likes he may say, return to me my money, or, if he wishes, he may say, give me the dinar of which I was defrauded." And if one has sold the value of six dinars for five, who was cheated? The seller; then he has the preference; he may choose to demand the return of the article, or he shall give him one more dinar, of which he was defrauded. (Hence it is considered a cheating either in price or in the money.) The schoolmen propounded a question: "If

there was a cheating less than a sixth, which, according to the rabbis is considered a relinquishment, does it take place immediately, or does the buyer have time to show it to a merchant or his relatives; and if you would say that so it is, what then should be the difference between a sixth or less? Shall we assume that if a sixth he has the preference, if he likes to make void the sale, or to demand the money he was defrauded of; and if it was less than a sixth the sale is valid, but the sum obtained by cheating must be returned?" Come and hear the last words stated in our Mishna: "and so they returned to the decision of the sages." (That is, that time for showing it to a merchant, etc., was always granted.)

Said Rabha: "The Halakha prevails as follows: If cheating was less than for a sixth of its value, the sale is valid; more than a sixth, the sale is void; and if, however, an exact sixth, the sale is valid, but the amount must be returned to him who was cheated, and in all such cases the time for showing to merchants, etc., is granted." There is a Boraitha supporting Rabha, viz.: "Cheating in less than a sixth, the sale is valid; more than a sixth, the sale is void; an exact sixth, the sale is valid, but the cheating must be returned." So is the decree of R. Nathan. R. Jehudah the prince, however, maintains: "The seller always has the preference; if he likes he may require the price which was agreed, or that the amount of which he was cheated should be returned; in both cases, however, time for showing it to a merchant must be granted to the buyer."

"*Until what time the retraction may take place*," etc. Said R. Na'hman: "This decision applies to the buyer only, but the seller may retract at any time." Shall we assume that the last words of our Mishna support R. Na'hman, as they are correct only when the seller has the right to retract at any rate; and, therefore, they were not benefited by R. Tarphon's decision; but if you would say that the seller has no more right than the buyer, then they could be benefited by R. Tarphon's decision, in case they have erred in the price of sale. Why, then, have they returned to the decision of the sages? (This is not to be considered a support, as it is not usual that the merchants of Luda should make an error in the sale.)

The host of Rami b. Hama sold an ass and erred in the price, and Rami found him dejected, and questioned him why, and he answered, because of the sale; and Rami told him to retract, but he rejoined that the time for showing it to a merchant, etc., had

already elapsed; then Rami advised him to go into the court of R. Na'hman, and he decided according to his theory stated above (in the beginning of the paragraph). His reason was that the buyer always carries the article with him, and so can show it to all, if there were an overcharge or not; but the seller, who is not in possession, must wait until a similar article is again in his possession to show it, and therefore he may retract. There was a man who had to sell pearls, which were worth five dinars each, and he demanded six. When, however, he was offered five and a half, he accepted it. A buyer who wanted to get the same for five dinars said to himself, if I would give him five and a half I could not sue him any more, as the half-dinar would be considered a relinquishment, as it is less than a sixth; I will, therefore, give him all he demands, and then I will sue him for cheating me of an exact sixth; and he will be compelled to return one dinar. When the case came before Rabha, he said that the law in question applied only to him who buys from a merchant, but of a private person no cheating is considered. A similar case came before R. Hisda, and he decided the same as Rabha did; and R. Dimi, who was present, said to him: "Even so; you have decided righteously." And so did R. Elazar also say: "Even so!" But is there not a Mishna which states, as the law of fraud applies to a layman it applies also to a merchant; now, is not a layman the same as a private person? Said R. Hisda: "The Mishna speaks of a private person who sells hemp articles; but if he sells the utensils which were used by himself, if not at a good price, he would not sell them."

MISHNA *III.*: The law of fraud applies to the buyer as well as to the seller, to a private person as well as to a merchant. R. Jehudah, however, maintains that there is no cheating concerning a merchant. The cheated one has the preference; he may demand his money should be returned; or, if he likes, the amount of which he was cheated.

GEMARA: Whence is all this deduced? As the rabbis taught, it is written [Lev. xxv. 14]: "Ye shall not overreach one another"; from this we learn in case the buyer was cheated, but whence do we know that same is the case with the seller? Therefore it is written [ibid., ibid.]: "Or buy aught of thy neighbor"; and both cases were necessary, for if the Scripture would mention the seller only, one might say that, because he is aware of the value of his stock, the cheating is a crime to him, but the buyer, who is not aware of the exact price, the law of fraud does not

apply; and if the Scripture would mention the buyer only, one might say, because he received for his money a valuable article which remains with him permanently. The law of fraud applies here, but the seller, who loses his article and takes money, which is not stationary, "as people say if you sell an article it is lost to you," one might say that the above law does not apply to him, therefore both are mentioned.

"*There is no cheating concerning a merchant*," etc. Because he is a merchant, no cheating should be considered? Said R. Na'hman in the name of Rabh: "R. Jehudah speaks of a specialist who knows the value, and the reason why he sold it below the price is to be considered that he needed money at that time to buy another bargain and, therefore, he relinquished the greater value of the article sold, and the retraction took place afterwards (therefore it must not be considered). R. Ashi, however, says: "R. Jehudah's decree may be explained thus: Concerning a merchant the prescribed kind of cheating is not to be considered, as he may retract even if it were other than the prescribed kind." There is a Boraitha supporting R. Na'hman, viz.: "R. Jehudah maintains no cheating exists in regard to a merchant, because he is experienced."

"*The cheated has the preference.*" According to whom is our Mishna? Not with R. Nathan, and also not with R. Jehudah the prince, of the Boraitha cited above. For our Mishna states, "if he likes," and R. Nathan's decision is strictly; and R. Jehudah mentioned in his decision "the seller," while our Mishna mentioned "the buyer"? Said R. Elazar: "I, indeed, do not know who taught our Mishna." Rabba, however, said: "The Mishna is in accordance with R. Nathan, and the Boraitha is to be corrected with the addition, 'if he likes.'" Rabha, however, maintains that the Mishna is in accordance with R. Jehudah, and that which was omitted in the Mishna concerning the seller the Boraitha explains. Said R. Ashi: "It seems to be that this explanation is correct, as the Mishna begins, 'to the buyer as well to the seller,' and thereafter it mentions only the buyer, of which is to be seen that something is omitted, and that was the seller." Infer from this that so it is.

It was taught: "If one says, I sell this article to you with the condition you shall not claim any cheating of me, Rabh says that he nevertheless may claim cheating, if there were any, and according to Samuel he may not. Said R. Anan: "Mar Samuel has explained to me his decree as follows: If one says,

with the condition you shall not claim of me any cheating, no claim must be considered; if, however, he say, with the condition that no cheating with the article should be claimed, if there was a cheating the claim must nevertheless be considered."

Said Abayi: "Rabh's decree is in accordance with R. Meier, who holds (in Tract Kedushin) that no condition can be made concerning a law which is plainly written in the Scripture, and Samuel's decree is in accordance with R. Jehudah, who holds that this rule holds only concerning prohibited things, but not in money matters." Rabha, however, maintains that both (Rabh's and Samuel's) statements are in accordance with both mentioned Tanaim, and notwithstanding present no difficulty, as the above Amoraim speaks of a case where the seller did not mention to the buyer that he is certain that the price is higher than the real value of the article, and the Tanaim of the above cited Mishna speak of a case where such was mentioned, as so we have learned in addition to our Mishna in the following Boraitha: "This is only in case where the seller says, I do not think that you will be cheated, but even if you should, you shall not claim cheating; if, however, a condition was plainly made, as, *e.g.*, the seller says to the buyer, this article which I am about to sell you for two hundred, I am aware has a value of only one hundred, and it will be yours for my price, with the condition that you shall not claim cheating; and the same is when the buyer says to the seller, this article I am about to buy from you for one hundred, I know is worth two hundred, and with the condition that no cheating shall be claimed, I give you the money, then no claim of cheating is to be considered."

The rabbis taught: "If one is doing business with his neighbor in trust,* he must not furnish him with bad articles in trust and with good articles according to their value, but both should be equal (if, for instance, there are two kinds of wine, good which can easily be sold wholesale, and bad which can be sold only in retail, the possessor must not offer the good to the agent for the full value, with the condition he shall sell for him the bad to storekeepers at any price he may obtain, and the money for both shall be returned to him after all is sold; that is, that for his trouble he should use the money obtained for the good until the

* He gives articles to his neighbor to sell, as he trusts him on his word. Rashi Tosephath, however maintains that it means, if one is furnishing his neighbor with money to buy articles for him. In accordance with Rashi's explanation, the law of cheating could not be applied.

bad be sold in retail, as this would be indirect usury), and for his trouble he should pay him the usual price. The commissioner, however, may charge him for carrying on his shoulder, for the hiring of a camel, and for storage and hotel, but not separately for himself, as he has been paid already for his trouble in full."

What does it mean that he shall pay for his trouble separately? Said R. Papa: "As, *e.g.*, the sellers of hemp articles get four per cent. 'as their commission.'"

MISHNA *IV.*: How much less of the quantity of the *Sala* should be effaced, that the law of fraud could not be claimed? According to R. Meier, four *issars*, which is one issar to each *dinar;* and according to R. Jehudah, four *pundiuns*, one *pundiun* to each *dinar*. According to R. Simeon, however, eight pundiuns; two pundiuns (which are four issars) to one dinar (and it means an exact sixth of its value). What time is to be given for retracting? In the large cities, time for showing it to a money-changer must be granted; and in villages, until the eve of Sabbath. If, however, there was a sale, even after an elapse of twelve months, he must accept its return without any claim, but he may be angry with him. Such a sala may be expended for second tithe without any fear, as he who does not accept circulating money is considered a bad man.

GEMARA: There is a contradiction to our Mishna from the following Boraitha, which states: How much should the *sala* be effaced that the law of fraud should apply? (the same quantity as in our Mishna is given; hence, according to the Boraitha, the law of fraud applies to such quantities, and according to our Mishna it does not?) Said R. Papa: "This presents no difficulty. The Tana of our Mishna comes from the bottom to the top (*i.e.*, an effaced sala until what quantity it may be circulated until it reaches the quantity mentioned; but if such a quantity is already reached, it is not any more considered in circulation, and the law of fraud applies); and the Tana of the Boraitha comes from top to the bottom (*i.e.*, if the effaced coin has lost the quantity in question, it is not more fit for circulation, etc., hence both statements have the same meaning)."

Why, then, do the Tanaim differ concerning a *sala* and not with another article, in which all agree that a sixth is the prescribed kind of cheating? Said Rabha: The Tana who holds a sixth is the prescribed kind is R. Simeon, who points to the same kind in a sala. Abayi, however, maintains that one usually relinquishes if he was cheated in value less than a sixth; as people say, pay

dearer for the necessity of your dressing, but for your stomach look that you are not overcharged. The text of the Mishna says: How much of the quantity, etc. A Tosephta in addition to this Mishna states that if it was effaced more than the above quantity, he may sell it for its value. What is the prescribed quantity of a diminished coin which one is still allowed to keep? If it was a *sala*, he may keep it if it still contains the value of a shekel; and if it was a dinar, he may keep it when a quarter of the quantity was diminished. If, however, it was less than one issar it is prohibited, and he must not sell it to a merchant, and not to a powerful man, or to a robber, as they may cheat some other persons with it, and therefore it is advisable he shall bore a hole in it, and put it around the neck of his son or daughter.

The master says: "A sala of the value of a shekel, which counts a half; and from a dinar only a quarter; why the difference?" Said Abayi: "The quarter concerning an issar means a quarter of a shekel, which counts a half of a dinar." Said Rabha: "It seems to me so, because it is not stated 'a quarter of it,' but a 'quarter,' which generally means 'of a shekel.'" But why should the prescribed quantity of a dinar be dependent upon a shekel? Herewith he teaches us, by the way, that there is a kind of dinar which came from a shekel (*i.e.*, that the quantity of the shekel was diminished to a half), and this is a support to the statement of R. Ami, who says that a dinar which came from a shekel may be kept for circulation (as every one could recognize that it is only a half of the quantity); but a dinar which came from a sala (*i.e.*, that the sala was diminished to the value of three quarters), it may not be kept in circulation even at the value of a dinar, because it is still a large coin, and can easily be taken for a shekel. The Boraitha states, if, however, it was less than an issar, then it is prohibited. How is this to be understood? Said Abayi: "It means to say, if the sale in question was diminished more than the value of an issar, it is prohibited to be kept." Said Rabha to him: "Why an issar? If the sala in question was diminished even only a trifle of the above quantity, it is also prohibited to be kept? Therefore," says he, "it means if a sala were diminished in quantity as an issar to a dinar, it is prohibited to be kept, and it is in accordance with R. Meier's opinion." An objection was raised: Until what quantity may it be diminished, and still allowed to be kept? If it was a sala, until the quantity of a shekel. Is it not to be assumed that it was diminished little by little, and still it was allowed to be kept until it became of the size of a shekel? Nay, it means that it was

dropped into the fire and diminished all at once. The master says: "He may bore a hole in it and put it around the neck," etc. There is a contradiction from the following: "An uncirculating coin must not be used as a weight, and also he must not use it for an ornament, and also he must not perforate it, and put it on the neck of his son or daughter; but he shall grind or melt it, or cut it in pieces, or throw it away into the Dead Sea" (so that it could not be used by swindlers, hence it states he must not perforate it, etc.). Said R. Elazar, and, according to others, R. Huna in his name: "This presents no difficulty. The statement that he may bore a hole in it means, in the middle of the coin, which spoils it entirely; and the statement that it may not means, on the side" (as a swindler could fix it).

"*What time is to be given for retracting*," etc. Why concerning a *sala*, it makes a difference between large cities and villages, which is not the case with another article? Said Abayi: "The statement of our Mishna concerning an article means also in the large cities." Rabha, however, maintains "that every one is aware of the value of a common article, but to understand the value of a sala one must be a money-changer; therefore, in large cities, where money-changers are to be found, such time is prescribed; in the villages, however, where money-changers are not to be found, time is given until the eve of Sabbath, when usually people go to the market to buy supplies for Sabbath.

"*If, however, there was a sala*," etc. Where? If in the large cities, there is a money-changer; and if in villages, it is said, "until the eve of Sabbath"? Said R. Hisda: "It is not the strict law, but a meritorious act for pious men is taught here." If so, how is to be understood the latter part, "but he may be angry"? Who should be angry—the pious one? Let him not accept it, and not be angry, or the one who returned it should be angry, why it was accepted? It means to say thus: "That even if he who is not pious, and does not accept it, the one who possesses the coin may be angry, but cannot sue him."

"*Such a sala may be expended for second tithe*," etc. Said R. Papa: "Infer from this that he who is too particular with the examination of money is considered a bad man, provided he can circulate it easily. Our Mishna may be a support to Hiskiyah, who said that if one came to change a coin of a second tithe for small money, he may take change only for its value; but if he would exchange the second tithe for it, he may take as much of the second tithe as if it would be a good one. How is this to be

understood? He means to say that, although, when changing it for small money, he cannot take more than its value, he may nevertheless take the second tithe for the full value of such a coin.

MISHNA *V.*: The prescribed quantity for cheating is four silver dinars to each sala; for a claim of which one of the parties must take an oath, no less than the value of two silver dinars. For admitting a debt, which makes him liable for a biblical oath of denying the claim of the plaintiff, a *perutha* is sufficient. In five cases the value of a perutha is prescribed—one just mentioned; second, a case of betrothal, for which the value of a perutha suffices; third, the one who benefits himself from the goods belonging to the sanctuary, with the value of one perutha, he has committed a transgression; fourth, who finds an article worth only a *perutha*, he is obliged to proclaim; and fifth, he who has robbed his neighbor for the value of one perutha, and has sworn falsely, and after repented, he must return it to him personally, even should the robbed one be at that time in Madai.

GEMARA: Was this not stated already in Mishna II? It is repeated because of the perutha of admission; but even this is already stated in a Mishna (in Kidushin, etc.)? It is repeated here also because of the new statement about the five peruthas.

"*In five cases the value*," etc. Let it teach, also, that there is one more perutha of cheating (*i.e.*, that when he sold an article for six peruthas, and it was worth only five). Said R. Kahana: "From this is to be inferred that the law of cheating does not apply to peruthas; it means that to less than a silver coin no claim of cheating can be made." Levi, however, maintains it does apply, and so he taught in his Boraitha. There are five *peruthas*—cheating, admitting, betrothal, robbing, and the warrant of the judges. Why does not the Tana of our Mishna mention that a warrant can be issued for a perutha? Is not robbery the same case, and it is mentioned? But notwithstanding that it mentioned robbery, it does mention a loss worth a perutha (which also must be decided by the court)? This was necessary to state, owing to the peculiarity of both. The robbed article must be returned, even if the owner is in Madai, and one must proclaim a lost article even if it was worth only one perutha, and after finding it is decreased in value. Why, then, does not Levi mention a lost article in *his* Boraitha? Because he mentioned robbery. But why does he mention the warrant for a perutha—is it not the same as robbery? This was necessary to deny R. Ktina's

statement, who maintains that a warrant can be issued even for less than a perutha. Rabha objected to R. Ktina's statement from the following: "It is written [Lev. v. 16]: And that in which he hath sinned against the holy thing, he shall pay." That means to include, that even when the value was less than a perutha, it must be returned; hence it is only of the sanctuary, but not of common property; therefore if it was taught in the name of R. Ktina, it was as follows: If the court found it necessary to take up the claim of the value of a perutha, it may issue a warrant even for less than a perutha, as the court does not start a case less than a perutha; but if it *was* started, the decision may be even for less.

MISHNA *VI.*: There are five fifth parts (which must be added to the principal amount) and they are: (1) who eats heave-offering; (2) the heave-offering of tithe (*the tenth part* of which the Levites must separate from the tithe [Num. xviii. 26]); (3) the same which was separated when the grain was bought from a suspicious man; (4) the first dough [Num. xv. 20]; and (5) the first-fruits [Lev. ii. 14]. The same is also the case if one redeems his plants in the fourth year (after planting), he must add a fifth part, or he exchanges his second tithe. The same is also the case if one redeems from the sanctuary the article he has sanctified, and also who had any benefit of the things belonging to the sanctuary, the value of a *perutha*, and also if one robbed his neighbor of the value of a *perutha* and swore falsely, all of them must add a fifth part to the principal amount.

GEMARA: Said Rabha: It was a difficulty to R. Elazar, the statement of our Mishna that a fifth must be added to the heave-offering which was separated when bought from a suspicious man, thus: Is it possible that the sages have given weight to their decision equal to the Scriptures? (The law that heave-offering must be separated when bought from the man in question is only rabbinically—would it not be enough that one should pay the principal amount only, if consumed?) Said R. Na'hman in the name of Samuel: This Mishna is in accordance with R. Meir, who says elsewhere (Erubin, p. 181) that the sages usually do so.

MISHNA *VII.*: To the following things the law of cheating does not apply: Bondmen, documents, real estate and property belonging to the sanctuary; and also the law of paying the double amount and of four and five fold does not apply to them. A gratuitous bailee does not swear (if lost), and a bailee for hire

does not pay (as they would do on movable common property). R. Simeon, however, says: If one is responsible for the property belonging to the sanctuary, the law of cheating does apply, but not when he is not responsible. R. Jehudah said that there is no cheating to him who sells holy scrolls, animals, or pearls (the reason why will be explained further on in the Gemara), but he was told that there is nothing to add to the things enumerated above.

GEMARA: Whence is this deduced? From what the rabbis taught: It is written [Lev. xxv. 14]: "And if thou sell aught unto thy neighbor or buy aught of thy neighbor's hand," which means things going from hand to hand; excludes real estate, which is not movable, and also bondsmen, who are equalled to real estate; excludes also documents, because it reads, "and if thou sell aught," which means that their body can be sold and bought; excludes documents, which are made only for the eye and of which the contents are for sale, but not their bodies [from this it was said that if one sells his documents for actual use (*i.e.*, for wrapping), the law of cheating does apply. Is this not self-evident? It was said to deny R. Kahana's theory that there is no cheating as to articles of which the value is only a *perutha*]; and things belonging to the sanctuary, because the verse reads, "From *thy brother*," to exclude the sanctuary. Rabba b. Mammal opposed: Is, then, the word *hand* everywhere mentioned in the Scripture literally? Is it not written [Num. xxi. 26]: "From his hand," which is certainly not literally, but from his control? On the other hand, can we then explain the word *hand* everywhere it is written not literally? Have we not learned in the following Boraitha: "It is written [Exod. xxii. 3]: 'If the thing stolen be actually found in his hand,' etc. From this we know when it was found *in his hand* only. Whence we deduce that the same is the case when it was found upon his roof, yard, or his veranda? Therefore it is written *Himatzeh Timatzeh*, (literally, 'found was found' *), to include the above." We see then, that if it were not for the superfluous word "Timatzeh" the word *hand* would be taken literally, provided that in such places (as cited above) where it is impossible to take it literally it is explained *control*.

R. Zera questioned: Does the law of cheating apply to a hire? Shall we assume that the Scripture reads *sale* but not *hire*, or

* Leeser translates according to the sense, but the verse reads as we have translated.

there is no difference? Said Abayi to him: Is it mentioned in the Scripture "a sale for ever"? Sale is mentioned anonymously, and a hire can also be called a sale for the time hired. Rabha questioned: If one bought wheat and sowed it in his field, how is the law? Is it to be compared to putting it in a vessel, and the law of fraud does apply, or, as it is in the earth, is it compared to real estate, to which the law of fraud does not apply? (Says the Gemara: Let us see how was the case? If the buyer said to the seller: "You shall sow six measures," and witnesses testify that he has sown only five, did not Rabha say elsewhere that everything with a measure, weight, or number, even in a quantity to which the law of fraud does not apply, the cheated may retract? The case was that the buyer bought a quantity of wheat needed for his field, with the condition that the seller should sow it, and thereafter it was found that he had not given the quantity needed. Hence the doubt to what case stated above it is to be compared. This question remains undecided.

Rabha in the name of R. H'assa said: R. Ami propounded the following question: The articles mentioned in the Mishna to which the law of cheating does not apply, how is the law if there was fraud to more than a sixth of the value, where in other cases the sale is abolished? Is it the same with the things of the Mishna, or not? Said R. N'ahman: Thereafter the same R. Hassa said that R. Ami resolved his question, and decided that only the law of fraud does not apply, but the law of abolishing the sale applies. R. Yonah, however, concerning things of the sanctuary, and R. Jeremiah concerning real estate, both in the name of R. Johanan, declared that the law of fraud does not apply, but the law of abolishing does. [He who applies Johanan's statement in regard to things of the sanctuary, applies it also in regard to real estate, and he who applies it in regard to real estate, to the things of the sanctuary, however, does not apply it, as Samuel said that things belonging to the sanctuary, if of the value of a *manah*, were exchanged for one *perutha*, the act is valid.]

An objection was raised from the following Mishna: "A blemished animal belonging to the sanctuary, if it was exchanged for an animal of a commoner, the exchange is valid and the blemished animal becomes ordinary; but if its value was more than its exchange, the money must be added to the sanctuary." And R. Johanan in explaining this Mishna said: It becomes ordinary biblically; the money of its value, however, which is said to be added, is rabbinically only. Resh Lakish, however,

maintains that the money in question is also biblically. Now let us see how was the case? If the exchanging animal was less in value than the prescribed quality of cheating, how could Resh Lakish say that the money must be added biblically? Does not our Mishna state that there is no cheating in sanctuary, and if it was less in value than a sixth, how could R. Johanan say that the money added is rabbinically? He himself said that the law of abolishing applies to it? There is a case of cheating, and they differ if the explanation of the statement, "the law of cheating does not apply." Should it be explained as R. Hisda interprets it, that the Mishna, with the expression "there is no cheating," means the prescribed quality of it does not apply, even if it were less than the prescribed quality it may also be abolished.

Another objection was raised: "The laws of usury and cheating apply only to commoners, but not to the sanctuary?" Should this Boraitha have more weight than our Mishna, which was explained that it means the prescribed quality of it? Interpret, then, this Boraitha in the same manner, namely: Usury and the prescribed quality do not apply to the sanctuary. If so, how should the latter part of it be understood? This is more rigorous in the case of a commoner than in the case of the sanctuary (and as you interpret, then the reverse is the case). This statement applies to usury only. But then it should state: Regarding cheating, however, the reverse is the case? What question is it? It is correct to say that this is more rigorous in case of a commoner, etc., as this is the only case; but regarding the sanctuary, is, then, this the only case in which it is rigorous? All cases of the sanctuary are rigorous.

"*Double amount*," etc. Whence is this deduced? As the rabbis taught: It is written [Exod. xxii. 8]: "For all manner of trespass"—that is, generally; "for an ox, for an ass, for a lamb, for raiment"—that is, *partis* (a special part); "or for any manner of lost thing"—it is again general. And there is a rule that when there is in the Scripture a general, a *partis*, and again a general, it must be judged similar to the *partis*, as the *partis* mentioned is a movable thing, and its body is of value. So also all movable things the bodies of which have a value; excluded being real estate, which is not movable, and also bondmen, who are equal to real estate, and also documents, of which, although they are movable, the bodies are of no value. And concerning the sanctuary there is another verse, which reads, "his neighbor," and the sanctuary cannot be considered a neighbor.

"*And of four and five fold*," etc. Why so? Because the Merciful One says payment of four and five fold, but not the payment of three and four (*i.e.*, as the double amount is excluded, it would be for a sheep threefold and for an ox fourfold, as explained in First Gate, page).

"*A gratuitous bailee*," etc. Whence is this deduced? As the rabbis taught: It is written [ibid., ibid., 6]: "If a man do deliver unto his neighbor," generally; "money or vessels," *partis;* "to keep," again generally; and there is a rule that when there is in the Scripture a general, a *partis*, and again a general, etc. (as explained above).

"*A bailee for hire*," etc. (The same question, "Whence is it deduced?" and the same answer from the same verse cited is repeated here.)

(Again) "*A bailee for hire*," etc. R. Joseph b. Hama raised the following contradiction to Rabba: In our Mishna it is stated that a bailee for hire does not pay. Is this not a contradiction to the following Tosephta (Sabbath, xix.): "If one hires an employee to take care of his cow or child or his seeds, he has not to pay him for the day of Sabbath; and, therefore, if an accident happens on Sabbath, the bailee is not responsible. If, however, he was hired for the week, month, or year, the payment for the Sabbath-days is not to be excluded; and, therefore, if an accident happens on the Sabbath-day, he is responsible." Is it not meant that he must pay (hence, it contradicts our Mishna, which states that in cases of consecrated things he does not pay)? And he answered: Nay; *i.e.*, he loses the payment for that day. If so, then the statement in the first part, that he is not responsible, means also that he does not lose. Has he, then, anything to lose—is it not stated plainly that he is not paid for that day? And Rabba kept silent. Then Rabba asked him: "Have you heard something in explanation of the Tosephta in question?" And he answered: "So said R. Shesheth: it treats when so was the agreement that the bailee should pay in case something happened; and the same said R. Johanan."

"*R. Jehudah said*," etc. There is a Boraitha in addition to our Mishna. R. Jehudah said: Also, by him who sells holy scrolls there is no cheating, for there is no fixed price of their value; and as to an animal or pearl, there is no cheating, as they (single ones) are usually bought for the purpose of matching in pairs. And it was said to him that all things are bought for the same purpose (consequently no exception is to be made). R.

Jehudah, however, maintains that the above-named things better answer this purpose. But in respect to what quality cheating is not to be considered? Said Ameimar: To the double amount of its value (but no more). There is also a Boraitha: R. Jehudah b. Bathyra says that also with him who sells a horse, a sword, and a shield *in war-time*, no cheating is considered, as there is a question of life.

MISHNA *VIII.*: As cheating is prohibited in buying or selling, so it is in words. (How so?) One must not ask the price of a thing when he does not intend to buy it. To a person who has repented one must not say, Remember your former acts. To a descendant from proselytes one must not say, Remember the acts of your parents. As it is written [Exod. xxii. 20]: "And a stranger * thou shalt not vex, nor shalt thou oppress him."

GEMARA: The rabbis taught: It is written [Lev. xxv. 17]: "And ye shall not overreach one the other"—this means, in words. But perhaps it means in business? It is already written [ibid., ibid., 14] concerning business. Hence this verse must apply to words only. How so? To a person who has repented one must not say, Remember your former acts. To a descendant of proselytes one must not say, Remember the acts of your parents. If a proselyte comes to learn the Torah, one shall not say, The mouth that hath eaten carcasses, etc., should utter the words Torah, which was pronounced by the mouth of the Almighty. To a person who suffers from chastisements, sickness, or burying his children, one must not say, as Job's colleagues said to him [Job, iv. 6, 7]: "Is not, then, thy fear of God still thy confidence, thy hope equal to the integrity of thy ways? Remember, I pray thee, who ever perished, being innocent? or where were the righteous destroyed?" Also, one must not send people to any one, telling them that he is a grain seller, who never was so. R. Jehudah says: One must also not inquire the price of an article, having no money to pay, as all that refers to his heart, and in such a thing it is said, "Thou shalt fear thy God."

Said R. Johanan in the name of R. Simeon b. Johai: Cheating in words is more rigorous than cheating in money. As to the former, it is written, "Thou shalt fear thy God," and as to the latter it is not written so. And R. Elazar says: The former is to his body and the latter to his money. R. Samuel b. Na'h-

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* The Hebrew expression for this word is "Gher," which has two meanings, *proselyte* and *stranger*.

meni says: The latter can be returned, but the former cannot. A disciple has taught before R. Na'hman b. Itzhak: One who abuses his neighbor publicly is compared to a shedder of blood. And he answered: Your statement is correct, as we see in the man who becomes ashamed, the red color of his face disappears and he becomes white.

Said Abayi to R. Dimi: To what thing do the Western people pay more attention? And he answered: To make pale the face (*i.e.*, putting people to shame). As R. Hanina said: All descend to Gehenna, except three. All! Is it possible? Say, All who descend to Gehenna return thence, except the following three, who descend and do not return: An adulterer, one who makes pale the face of his neighbor in public, and one who applies vile names to his neighbor. But is it not the same as making pale his face? *i.e.*, even when he was already used to be named so.

Said Rabba b. b. Hana in the name of R. Johanan: It is rewarded more leniently that one commit a doubtful adultery than to make pale the face of his neighbor. Whence is it taken? From Rabha's lecture, thus: It is written [Psalms, xxxv. 15]: "But in my downfall they rejoiced, and gathered themselves together . . . they did tear me, and ceased not." Thus said David before the Holy One, blessed be He: "Lord of the Universe, it is known before thee that if they would tear my flesh the blood would not run. Even when they are occupied in the study of *Negaim* and *Ahaloth* they said to me, David, who is an adulterer, with what kind of a death must he be punished? And I answered them, He is to be hanged: he, however, has a share in the world to come, but he who makes pale the face of his neighbor publicly has no more any share in the world to come."

Mar Zutra b. Tubia in the name of Rabh, according to others R. Hana b. Bizna in the name of R. Simeon the Pious, and still to others R. Johanan in the name of R. Simeon b. Johai, said: It is better that one throw himself in a burning furnace than to make pale the face of his neighbor publicly. And this is taken from the act of Tamar, as it is written [Gen. xxxviii. 25]: "When she was led forth, she sent to her father-in-law," etc.

Rabh said: One should be careful with his wife, not to deceive her even in words, for often her tears hasten the punishment. R. Elazar said: Since the destruction of the Temple the gates of prayer are closed. As it is written [Lamentations, iii. 8]: "Also when I cry aloud and make entreaty, he shutteth out my prayer."

However, the gates of tears were not closed. As it is written [Psalms, xxxix. 13]: "Be not silent at my tears."

Rabh said again: He who follows the advice of his wife falls into Gehenna. As it is written [I Kings, xxi. 25]: "But indeed there was none like unto Achab . . . to which his wife incited him." Said R. Papa to Abayi: Is that so—do not people say: "If thy wife is little, bow thyself and listen to her advice?" This presents no difficulty. Rabh speaks about worldly affairs, and the people's saying is about house affairs. According to others, Rabh speaks of heavenly affairs and the others about worldly affairs. R. Hisda said: All gates are closed for prayers except for him who cries upon cheating. As it is written [Amos, vii. 7]: "Behold, the Lord was standing upon the wall of *Anach*, and in his hand was an Anach."* Said R. Elazar: All sinners are punished through a messenger, except the cheater, who is punished by the Lord himself, as it reads: "And the Anach is in *His* hand." R. Abuhu said: For the following three the petition of the Shekhina is not shut: Cheating, robbery, and idolatry. Cheating, as mentioned above—"Anach in His hand;" robbery, as it is written [Jer. vi. 7]: "Violence and robbery are heard in her; in my presence there are continually disease and wounds;" and idolatry, as it is written [Isaiah, lxv. 3]: "The people that provoke me to anger to my face continually."

R. Jehudah said: One should always be careful about grain in his house, as the quarrel in the house comes often about the grain. As it is written [Psalms, cxlvii.]: "He who bestoweth peace in thy borders, who satisfieth thee with the best of wheat." Said R. Papa: This is what people say, "When the barley is out of the barrel, the quarrel knocks at the door." And R. Hinna b. Papa also said: One should always be careful about grain in his house, as Israel was called poor only because of grain. As it is written [Judges, vi. 3–6]: "And it was when Israel had sown, etc. . . . And they encamped against them . . . and Israel was greatly impoverished."

R. H'albo said: One should always be careful with the honor of his wife, as the blessing in the house usually comes for the sake of the wife. As it is written [Gen. xii. 16]: "And he did well to Abram for *her* sake." And this is what Rabha used to say to the inhabitants of his town, Mahuza: Revere your wives, for the purpose of becoming rich.

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* The term for cheating in Hebrew is *Onaah*, hence the analogy of *Anach*.

There is a Mishna (Keilim, V., 10) which treats of an oven which R. Eliezer makes clean and the sages unclean, and it is the *oven of a snake.** What does this mean? Said R. Jehudah in the name of Samuel: It intimates that they encircled it with their evidences as a snake winds itself around an object. And a Boraitha states that R. Eliezer related all answers of the world and they were not accepted. Then he said: Let this carob-tree prove that the Halakha prevails as I state, and the carob was (miraculously) thrown off to a distance of one hundred ells, and according to others four hundred ells. But they said: The carob proves nothing. He again said: "Let, then, the spring of water prove that so the Halakha prevails." The water then began to run backwards. But again the sages said that this proved nothing. He again said: "Then, let the walls of the college prove that I am right." The walls were about to fall. R. Joshua, however, rebuked them, saying: "If the scholars of this college are discussing upon a Halakha, wherefore should *ye* interfere!" They did not fall, for the honor of R. Joshua, but they did not become again straight, for the honor of R. Eliezer [and they are still in the same condition]. He said again: Let it be announced by the heavens that the Halakha prevails according to my statement, and a heavenly voice was heard, saying: Why do you quarrel with R. Eliezer, who is always right in his decisions! R. Joshua then arose and proclaimed [Deut. xxx. 12]: "The Law is not in the heavens." [How is this to be understood? said R. Jeremiah: It means, the Torah was given already to us on the mountain of Sinai, and we do not care for a heavenly voice, as it reads [Exod. xxiii. 2]: "To incline after the majority." R. Nathan met Elijah (the Prophet) and questioned him: "What did the Holy One, blessed be He, at that time?" (when R. Joshua proclaimed the above answer to the heavenly voice), and he rejoined: "He laughed and said, My children have overruled me, my children have overruled me."] It was said that on the same day all the cases of purity, on which R. Eliezer decided that they were clean, were brought into the college and were destroyed by fire. And they cast a vote, and it was decided unanimously to *bless* him (to place him under the ban). The question arose, then, who should take the trouble to inform him, and R. Aqiba said: "I will do so immediately, for one who is not fit for such a message may go

* The expression in text is the oven of *Akhnai*, which means in Chaldaic snake. Thosphat, however, maintains that the man who made the oven was named *Akhna*.

and inform him suddenly, and he will destroy the world." What did R. Aqiba? He dressed himself in black and wrapped himself with the same color, and sat at a distance of four ells from R. Eliezer. And to his question: "Aqiba, what is the matter?" he answered: "Rabbi! it seems to me that your colleagues have separated themselves from you." The rabbi then tore his garments, took off his shoes, and sat on the floor, and his eyes began to flow. The world was then beaten a third in olives, a third in wheat, and a third in barley. According to others, even the dough which was already in the hands of the women became spoiled. A Boraitha states that that day was the severest of all days, as every place on which R. Eliezer had set his eyes was burned. And also Rabban Gamaliel, who had at that time been sailing, was in danger of drowning by a tempest, and he said: "It seems to me that this storm is because of R. Eliezer b. Hurkanus." He then arose and prayed: "Lord of the Universe, it is open and known before thee that not for the sake of my honor or the honor of my parents I acted so, but for thy glory, to prevent a quarrel in Israel." And the sea then became quiet.

Eima Shalum, the wife of R. Eliezer, was a sister of Rabban Gamaliel, and since that time she prevented her husband from falling upon his face.* It happened, however, in a day which was the last of the month, and she erred, thinking that this day was the first of the month (in which the falling upon the face is not customary). According to others, a poor man knocked at the door and she was going to give him some bread, and when she returned she found her husband falling on his face, and she said to him: "Arise, you have already killed my brother!" In the meantime it was heralded by the house of Rabban Gamaliel that he was dead, and to the question R. Eliezer asked her: "Whence did you know this?" she answered: "I have a tradition from the house of my grandfather that all gates are closed for prayers, except for him who cries upon cheating."

The rabbis taught: "He who cheats a stranger transgresses three negative commandments, and he who oppresses him transgresses two." Let us see. Regarding cheating there are three negative commandments [Exod. xxii. 20, Lev. xix. 33 and ibid. xxv. 17], as the expression "the other" includes a stranger also. Then there are three negative commandments concerning oppres-

* There was a custom of falling upon the face at a certain prayer daily, except on half-holidays, as Chanukah, Purim, and New-moon.

sion also—namely, Exod. xxii. 20, xxiii. 9, and ibid. xxii. 24—which include also the stranger. Hence there are three negative commandments in oppression also? Read, then, in both cases: He transgresses three negative commandments.

We have learnt in a Boraitha: R. Eliezer the Great said: Why does the Scripture in thirty-six, according to others in forty-six places, warn concerning strangers? Because they are of a mischievous nature.* Why is there added [Exod. xxii. 20], "for strangers ye were in the land of Egypt"? There is a Boraitha: R. Nathan says: Do not rebuke your neighbor for a similar blemish to that you have on your body; and this is what people say: To him who has had a hanged one in his family, do not even mention *hang up* a fish.

MISHNA *IX.:* One must not mix together fruits from two separate fields, if the seller has named the field of which the fruits were to be issued; and even when the fruits of both are new, much less old with new. In reality, it was said of wine that it is allowed to mix old with new, when the new was sold, because the old improves the new. However, one must not mix the yeast of one wine with another wine, but he may give him the yeast of the same. If the wine was mixed with water, he must not sell in his store, provided he informed the buyers; not to a merchant, however, even if he informed him, for he buys only for the purpose of cheating. In the places where it is customary to mix water with wine, he may do so. A merchant may buy grain from five barns and place it in one store-room; he may also buy wine from five presses and put it in one cask, but not with the intention of mixing it.

GEMARA: The rabbis taught: "It is not necessary to state, if the new was sold four measures for one *sala* and the old three measures only that they must not be mixed (if he sold him old ones), as this would be plain cheating; but even when the reverse is the case, he must also not do so, as usually one buys it to keep for a long time (the new becomes old and the old—spoiled)."

"*In reality, it was said,*" etc. R. Elazar said: Ada was the one who said that wherever the expression "in reality" is stated, it means that so the Halakha prevails. Said R. Na'hman: The Mishna treats of a case in which it was done in the time of wine-pressing, as in that time the wine is fermenting, and therefore it is improving; but after the time is over, it spoils. But now it is customary to mix it, even not at that time. Said R. Papa: It is

* An explanation to this will be found in Tract Hrajoth.

because people are aware of it, and relinquish their right. R. Aha b. R. Ika said: They do in accordance with R. Aha of the following Boraitha, who permits to mix beverages which are to be tasted, as the buyer recognizes if mixed.

"*But he may give him the yeast of the same,*" etc. But is it not stated in the first part that it must not be mixed at all? And lest one say that the Mishna means he shall inform him, this would not hold good, as is stated in the latter part, he shall not sell it in his store provided he informed the buyer, from which it is to be inferred that the first part treats even when not informed. Said R. Jehudah, it means to say thus: One must not mix the yeast of yesterday with the wine of to-day, and *vice versa;* he may, however, give him the yeast of the same. We have also learnt this in the following Boraitha: "R. Jehudah said: He who pours wine for his neighbor must not mix wine from yesterday with that of to-day, and *vice versa,* but he may do so with the wines of the same day."

"*If water was mixed,*" etc. It happened that wine was brought to Rabha from a store; he mixed it, tasted, and it was not sweet, and he returned it to the store. Said Abayi to him: "Did not our Mishna state that he must not furnish it to a merchant, even if he was informed" (how, then, did you return the mixed wine to the merchant)? And he answered: "The wine which I mixed is easily distinguished (because I make it very weak), and lest one say that the store-keeper would add wine to it so that the water will not be recognized, then it would be probibited to sell even plain water to a wine-merchant, lest he mix it with wine."

"*In the places where it is customary,*" etc. A Boraitha in addition to our Mishna states that he may mix a half, a third, or a quarter, as is customary in that city. Said Rabh: The Mishna, however, treats of the time of wine-pressing (but not otherwise).

MISHNA *X.*: R. Jehudah said: A store-keeper must not furnish little children with presents of nuts, etc., because he accustoms them to buy all their needs at his place. The sages, however, permit this. He also prohibits to lower the prices, for the above reason. The sages, however, say that people may be grateful for such an act. A store-keeper must not take off the shells of beans, in order to raise the price more than if they remained in the shells. The sages, however, permit (as the buyer usually knows the difference of the prices). They, however, agree that one must not do so with the top of the measure

only, for he deceives the eye (as the buyer may think that the contents of the whole measure is so). The embellishment of articles which are to be sold, *e.g.*, slaves, animals, or vessels, is forbidden (further on, the meaning).

GEMARA: What is the reason of the rabbis who permit to give presents to children? Because the store-keeper may say to his competitor: "I distribute nuts; you may do so with plums."

"*To lower the prices*," etc. For what reason do the rabbis permit this? Because he influences the wholesaler to lower his prices also.

"*To take off the shells*," etc. Who are the sages mentioned in the Mishna? R. Aha of the Boraitha, who permits to do so with visible things.

"*The embellishment of*," etc. The rabbis taught: "One must not brush up an animal's hair to give it a delusive appearance of fatness, or make it drink water of bran-flour, which causes its hair to be so."*

It is also not allowed to blow up entrails (for sale, to give them a delusive appearance), also not to soak meat in water (for the purpose of increasing the weight). Samuel has permitted to put silk fringes on a mantle (so as to make it appear more woolly). R. Jehudah did so with fine clothes, to gloss them by rubbing with a substance. Rabba permitted to press hemp garments, and Rabha to paint arrows, and R. Papa baskets (*i.e.*, to give them a better appearance). But does not our Mishna state that embellishment for slaves and animals is not allowed? This presents no difficulty: new ones are to be embellished, but old ones are not allowed, as they may get a new appearance (and the buyer will be cheated).

Concerning slaves, what embellishment can be done? As it happened, one old slave painted his hair and beard and came to Rabha that he should buy him. And Rabha answered him: "Let thy house be open for the poor" (*i.e.*, I have the service of the house done by poor men). When he came to R. Papa b. Samuel, he bought him. One day he told him to bring a drink of water, and he washed away the paint and told him: "See, I am older than your father;" and R. Papa read to himself the following verse [Proverbs, xi. 8]: "The righteous is delivered out of distress, and *another* cometh in his stead."

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* The term in the Boraitha is *mesharbtin*, and as to the question of its meaning, Zera in the name of R. Kahana gives the former, and some other the latter.

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L. RODKINSON

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TRACT BABA METZIA
(MIDDLE GATE, PART II.)

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EXPLANATORY REMARKS

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted") we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

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TO HIM

WHO HAS EVER BEEN AMONG THE FIRST TO GIVE HIS FREE-WILL OFFERINGS IN BEHALF OF THE DOWNTRODDEN—A LIBERAL DONOR TO ALL PHILANTHROPIC INSTITUTIONS—A STAUNCH FRIEND AND ADVOCATE OF ISRAEL'S PUREST IDEALS, TRADITIONS, LITERATURE AND RELIGION—AN ILLUSTRIOUS EXEMPLAR

LEONARD LEWISOHN, Esq.

THIS TRACT—BABA METZIA (Vols. XI. and XII.)—WHICH TREATS OF ZEDAKAH (JUSTICE-CHARITY) AND MISHPOT (JUDGMENT), IS MOST RESPECTFULLY DEDICATED

BY THE EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON

New York, in the month Ziv 5661, April 25. 1901.

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MISHNAS *V.* TO *VI.* All specialists are considered bailees for hire. One may let out a pledge of a poor man and deduct the amount earned from his indebtedness. If one hires a cow, how shall he pay in case it is lost? (See p. 202 for meaning). If one bought utensils from a specialist to send to the house of one's father-in-law, etc. There was a man who sold wine to his neighbor, and the buyer said: I shall carry it to such a place, etc. Guard for me this article and I will guard yours to-morrow; or, I will lend you, or *vice versa*. All are considered bailees for hire, one to the other. The two cases in which R. Papa and Rabha were embarrassed for their decisions and finally it was found that their decisions were correct. If a depositary said: Leave it here "for you," he has no responsibility whatever, but how is the law if he said: Leave it "anonymously"? On a pledge he is considered a bailee for hire. If one carries a barrel from one place to another and breaks it, he must swear that there was no neglect, etc. R. Eliezer was wondering how such a decision could hold good. What shall he swear? I swear that I broke it unintentionally. There were carriers who broke a barrel of wine belonging to Rabba b. b. Hana, while in his service, and Rabh commanded Rabba to return their garments and pay them for their labor, for this is the meaning of the verse, Prov. ii. 20 201–208

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one hires a field and it was a dry place, or a group of trees, and thereafter the spring ceases to flow, etc. If the hirer told him : Rent to me this dry field, etc. If one has undertaken to work up a field and he has neglected to do so. Mair, Jehudah, Hillel, Jehoshua, and Jose, these considered the language of the common people legal (although it was not in accordance with the enactment of the sages). If one lends money to some one, he has no right to pledge him through the court for more than he owes him. Rabina used to double the amount in the marriage contract, etc. There was one who undertook to work up a field, and he said : Should I neglect, I will give you one thousand zuz, etc. There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy. If one has given articles for business without any stipulation, and took from him two notes, etc. If the gardener did not want to weed the field, saying : I will give you your due, he must not be listened to. . 273–279

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MISHNAS *X.* TO *XIV.* If one hires a field for the whole sabbatic season for seven hundred zuz, the sabbatic year is included. A day-laborer has to

collect his money the whole night after that day, etc. The transgression of this commandment comes and ceases with the first morning. One who withholds wages transgresses the commandments of five verses, etc. The commandment: "In the same day you shall give his wage," and also the negative, "There shall not abide . . . until morning," applies to men, cattle, and vessels. To a proselyte who promised not to worship idols and not to commit adultery, but not to conform to other Jewish laws, the commandment applies. One who withholds wages is considered as if he would take out the soul. If the storekeeper or the money-changer failed to pay him, may he return his claim to the owner or not? Is piece-work subject to that law or not? If a creditor has to pledge his debtor, he may do so only by court, etc. If things belonging to a debtor are to be sold out, has the court to consider which should be sold and which left to him, or is all to be sold out? If one lends money to his neighbor, he has no right to pledge him, is not obliged to return, transgresses all the commandments which are in the Scripture concerning [pledging]—what does this mean? If the pledge was returned and the borrower died, etc. One who pledges a nether and upper millstone transgresses a negative commandment and is guilty for two articles. There was a man who pledged a butcher knife from his debtor, etc. 295–307

CHAPTER X.

MISHNAS *I.* TO *VI.* If one owns a house, the upper chamber of which belongs to another, and it falls. If the attic was ruined, and the owner of the house declined to repair it. When the tenant goes to dwell in the lower apartment, must the owner vacate it for the tenant, or should they dwell together? Must the party doing the damage remove the cause of it, or must the injured party remove the cause of the damage? One is responsible for damage done to his fellow by things which come directly from him (though it is the obligation of every one to keep aloof from damaging things). A house with an attic, belonging to two persons, which becomes ruined; the owner of the upper chamber requires the rebuilding, and the owner of the house refuses, etc. The same is the case with an olive-press which was placed under a garden, etc. A wall or a tree which falls suddenly on a public thoroughfare and causes damage, etc. What time is fixed for such a case by the court? The same is the case with a laborer who was told by his employer to take the articles with which he was engaged for payment. Whether looking gives title to an ownerless article or not, the Tanaim differ. One must not place his manure upon a public ground, unless it is immediately taken away by those who want to use it. If a hewer of stones has transferred them to the polisher, and they cause damage while under his control, the latter is responsible. When two gardens were placed one above the other, and some herbs were grown between them, the upper one may use that which he can reach with his hand, provided he does not exert himself to reach them. This was reported to the King Sabura. 307–316

TRACT BABA METZIA (MIDDLE GATE).

CHAPTER V.

RULES AND REGULATIONS CONCERNING USURY IMPRISONMENT, RENTING HOUSES, INSTALMENTS, LOANS FOR HALF PROFIT, APPRAISING, ETC.

MISHNA *I.:* What is considered usury, and what is considered increase? If one lends a "sela" (four dinars) to get five, or two "saahs" wheat for three, this is prohibited, because it is biting. And what is considered increase? One buys wheat, a "kur" for a golden dinar (twenty-five silver dinars), which is the market price, and the price of wheat advances to thirty silver dinars; the buyer then requires his wheat, which he desires to sell, and buy wine for it. The seller said: "I accept the wheat for thirty dinars, and you shall have to get wine from me according to the present market price," but he has not wine ready for delivery; this is an unlawful increase.

GEMARA: In leaving out usury, which is biblical, and explaining increase, which is rabbinical only (which is the matter of an exchange), it may be deduced that, biblically, "usury" and "increase" are one and the same thing; and yet both expressions are mentioned in the same sentence [Deut. xxiii. 20]: "Usury of money, and increase of victuals?" Said Rabha: There is indeed not a case of "usury" without an "increase," and *vice versa*. The Scripture, however, mentioned purposely Neshekh (biting) and Tarbeth (increase), to teach us that there are two negative commandments for usury. The rabbis taught: It is written [Levi., xxv. 37]: "Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase." There is mentioned only usury of money, and an increase of victuals; whence we know that even the negative commandment of usury is to be applied on victuals also? There it is said [Deut., xxiii. 20]:

"Usury of victuals." Whence the negative commandment of increase on money? It is therefore said [*ibid., ibid.*], "usury of money." This expression is superfluous, as it is said at the beginning of the same sentence: "Thou shalt not lend upon usury to thy brother," etc., which includes any kind of usury; therefore this superfluous expression is to be applied for the negative commandment of increase (tarbeth) on money. As this verse speaks of the borrower only, whence do we know that the same is the case with the lender? From the analogy of expression, "usury," which is used in both cases, we deduce that, as in the former case, there is no difference between money, victuals, usury, or increase. Whence, however, is to be deduced, that any increase is prohibited? From [*ibid., ibid.*] "usury of anything that is lent upon usury."

Rabbina, however, said: The analogy of expressions would be needed if the Scripture would read: "Thou shalt not give him thy money upon usury, and thy victuals," etc.; but as it is written: "Thou shalt not give him thy money, and upon increase," etc., it is not necessary, because we read: "Thou shalt not give him thy money upon usury and increase," and we also read: "With usury and increase thou shalt not give thy victuals." But says the Gemara: Did not the Tana of the Boraitha deduce analogy of expressions! How then can Rabbina, as an (Amoroi) oppose the statement of a Tana? There is no opposition, as he means to say, that if it would not be plainly written in the Scripture, it could be deduced from the above analogy of expression. The above analogy, however, is needed to include every kind of usury which is not mentioned in the Scripture, concerning a lender. Rabha said: Why does the Scripture mention separately a negative commandment regarding usury, robbery, and cheating? (Are they not all of one and the same character?) It is necessary, for if it were written concerning usury, only, one might say it is something peculiar, as the borrower (who needs the money) is also forbidden to give usury; hence, robbery and cheating could not be deduced (as there is a rule that nothing is to be deduced from a peculiarity). If concerning robbery only, one might say because there is an act of violence, of which cheating cannot be deduced. And if it were stated concerning cheating only, one might say that because he was not aware of the cheat, and could not relinquish even if he would like to do so, therefore the above could not be deduced. Let us see. If even one from another cannot be deduced, why, then, should not

one of them be deduced from the two others? Which of them! Suppose it should not be written concerning usury, and therefore be deduced from the others. One may say that in both the above cases it was done against his will, which is not the case with usury, as the borrower agrees. And should it be deduced concerning cheating from above two, one might say that buying and selling matters cannot be deduced from a case of violence, etc. But let the Scripture leave robbery, which could be deduced from the above, as what would be the objection? "Usury is a peculiarity!" cheating would prove; and if there would be an objection that in the case of cheating no relinquishment could be made, as it was not known, usury would prove. The same discussion will revolve indefinitely, and though the points of each are different, they are equal, however, in one point: that their acts are considered a robbery; hence, robbery could be deduced? It may be said: That so it is, and the commandment of robbery applies to him who withholds the wages of an employee. But is this not plainly written [Deut., xxiv. 14]: "Thou shalt not withhold," etc.? It is written to show that two negative commandments shall be applied to any act of unjust keeping of wages. If so, why then is theft mentioned? (Could it not be deduced from above?) It is needed, as it is stated in the following Boraitha: "Thou shalt not steal," even with the intention to vex a short time, and returning; "Thou shalt not steal," even with the intention to please your neighbor with the due double amount (instead of charity, which he would probably not accept). R. Yimar questioned R. Ashi: (After all that is said above,) is not the commandment superfluous concerning right weight? And he answered: The commandment applies to him who hides his scales in salt that they should become heavier. But is this not a direct robbery? I mean to say that the transgression comes just with the act (although he had not used it as yet).

The rabbis taught: It is written [Lev., xix. 35]: "Ye shall do no unrighteousness in judgment, in mete-yard, in weight, or in measure." Mete-yard means measuring real estate; one should not measure with the same rope for two heirs, for one in the summer season and for the other in the winter (because the rope, if dry, is shorter). "In weight" means, one should not hide the weight in salt (explained above). A small liquid measure one shall not fill up in a manner to make foam; and from this the following *a fortiori* conclusion is to be drawn: Of a small measure which contains only a thirty-sixth part of a lug, the

Thora is particular that the liquid should not be measured with foam; of a hin or a lug, or a half, third, or quarter of a lug, so much the more the measure must be full without foam.

Rabha said: Why is the redemption from Egypt mentioned in the Scripture in conjunction with usury, zizith, and weight? The Holy One, blessed be He, said: It was I who distinguished in Egypt between a first-born and another one, and it is also I who will punish one who lends money upon usury to an Israelite with the pretext that the money belongs to a heathen; and also him who hides his weights in salt, and finally him who puts thread of χαλαιγος in his garment and saying: it is purple-blue prescribed in Scripture for Tshitstits; as in these three things human beings can easily be deceived.

R. Huna happened to come to Sura of Euphrates. On that occasion Hanina of the same place questioned him: Why did the Scripture mention the redemption from Egypt in conjunction with the eating of reptiles? And he answered: "So said the Holy One, blessed be He: I who have distinguished in Egypt, etc., will punish one who mingles the inwards of unclean fishes with the inwards of clean ones and sells them to an Israelite. And he rejoined: What I do not understand is, why is here mentioned "who brought you up," which is not the case in the other place where the redemption from Egypt is mentioned?

Said Rabbina: To that was taught by the school of R. Ismael: The Holy One, blessed be He, said: If the only reason why Israel should be redeemed from Egypt would be that they should not defile themselves with the consummation of reptiles, it would be sufficient [*i.e.*, the expression, Who brought you up, is in the Hebrew *Hamnaleh*, which means also, a higher standing]. To the question, however, Is then the reward for not eating reptiles greater than that of the three things mentioned above (to which the expression, I brought you up, is not used)? he rejoined: The question here is not about reward, as the Scripture means they were brought up in such a manner that they felt disgust to defile themselves with reptiles.

What is considered increase, etc.? Is then all that mentioned before in the Mishna not increase? Said R. Abuhu: The cases of the first part are biblically prohibited, and those of the latter rabbinically only. And so also said Rabha, with the addition that to the first part the verse [Job, xxvii. 17]: "He may prepare it, but the just shall put it on," applies (*i.e.*, that the children, even being upright, are not obliged to return usury taken by their

wicked fathers). But why not so much the more in the second part, which is rabbinical? Say then: The above cited verse applies to the first part also, although the first part treats of direct usury and the second of indirect. R. Elazar said: Direct usury is to be replevied by the court, which is not the case with indirect usury. R. Johanan, however, maintains that even the former is not to be replevied. Said R. Itzhak: The reason of R. Johanan's decision is the following verse [Ezekiel, xviii. 13]: "Hath given forth upon usury, and hath taken increase, shall he then live? He shall not live; he has done all these abominations." Hence such a man is charged with a crime of capital punishment, from whom damages are not collected.

R. Adda bar Ahaba says of the following [Lev., xxv. 36]: "Take thou no usury of him or increase, but fear thy God." Hence nothing is mentioned here about the restoration (as is mentioned in the case of theft or robbery).

Rabha, however, said: It is to be deduced from the first part of the above cited verse itself [Ezekiel, xviii. 13]: "He shall surely die: his blood shall be upon him." Hence the usurers are equalled to blood-shedders; as bloodshed cannot be restored, the same is the case with usury. R. Nachman bar Itzhack said: "The reason for R. Elazar's theory stated above is because it treats in the latter part of the verse mentioned before [Lev., *ibid.*, *ibid.*], that he may live with thee, which means, return him the usury taken, that he may live. R. Johanan, however, applies this verse to the case mentioned in the following Boraitha: "If two were on the road (in the desert), and one of them has a pitcher of water which is sufficient for one only until he may reach an inhabited place, but if both would use it both would die before reaching a village;" and Ben Patturo lectured that in such a case it is better that both should drink and die than one should witness the death of his comrade. (And so it was practised) until R. Aqiba came and taught: It is written: "That thy brother may live *with thee*" (but shall not die with thee, *i.e.*, the life of thyself is preferred to the life of thy brother).

R. Saffra said: Promised usury, which, according to the Persian Law, is collected from the borrower for the lender, according to our Law must be collected from the lender for the borrower; and that which, in accordance with the Persian Law, is not to be collected, is also not to be collected from the lender, according to our Law. Said Abayi to R. Joseph: Is this to be considered a standing rule? Are not then two saahs of grain promised for one

saah, that the Persian court collects from the borrower for the lender, and we do not return such to the borrower? And he answered: They do not collect it because of usury, but because they consider it as a deposit in the hand of the borrower when the grain was dear, and now, as it is cheaper, they collect the value of the deposited grain, which may amount to the extent of two saahs (according to our Law, however, it is prohibited, because it appears usurious). Said Rabbina to R. Ashi: Let us see. A pledge without account (*i.e.*, if one has borrowed money for a vineyard and the creditor used the fruit of it without deducting anything of the debt, but for usury of the money), if the borrower used the fruit for himself, the Persian court collects from the borrower for the lender; and according to our law in such a case we do not collect from the lender for the fruit he has used (as it is not considered direct usury, because it may happen that the vineyard should be sterile)? And he answered, that this also is not because of usury, but because they consider it a regular sale. (The lender paid money for the vineyard, and it is considered his until the borrower repays the amount, which is considered another sale.) Then how is R. Saffra's statement to be understood? His statement is concerning money matters only, direct usury, which is allowed by the Persians, and such a promise is collected by their court; in accordance with our Law, if the lender has already taken charge, it is to be collected from him by a court, and this is in accordance with R. Elazar's theory stated above, and also his further statement that what the Persians do not collect from the borrower speaks of usury which was not fixed with the loan, but taken previously or after it (as will be explained in the last Mishna of this chapter).

If one buys wheat, etc. And if he has no wine, is this to be considered increase? Have we not learned in the following Boraitha: "A price must not be fixed on fruit before the market prices are announced; but when already announced, one may sell it for this price even if it is not in his possession as yet?" Said Rabba: Our Mishna treats when he came to take it for his debt, as is illustrated in the following Boraitha: "If one claims a hundred zuz, and goes to the barn of his debtor, saying: 'Give me my money, as I intend to buy wheat for it,' and he says: 'You can buy it from myself at the existing market price, and I will deliver it to you in monthly instalments during this year,' it is prohibited (although it would be allowed if he would advance him cash now), as the old debt is not considered for cash at the time

of this agreement." (Hence the statement of our Mishna that when he has no wine at the time it is considered an increase, which is prohibited.) Said Abayi to him: If so, then even when he possesses the wine it should be considered an unlawful increase (as the wheat which he claims is an old debt)? Therefore, said Abayi, the Mishna is to be explained as R. Saffra illustrated the law of usury taught in the school of R. Hyia: "There are things which in reality ought not to be considered usury, and nevertheless they are prohibited because they *appear* usurious." How so? (Illustrates R. Saffra:) If one said: "Borrow me a mana" (which is twenty-five selas), and he answered: "I have no money in cash, but I can furnish wheat for a mana," and he accepted, and thereafter the lender buys it from him for twenty-four selas, this is lawful, but nevertheless it is prohibited to be practised, as it appears usurious. And similar to this case may be the case in our Mishna illustrated; namely, if one said: "Borrow me thirty dinars," and he said: "I have no cash, but I can furnish you wheat for this amount," and he accepted, and thereafter the lender bought from him for a golden dinar (which is twenty-five silver dinars) as the market price at that time, but before delivering it to him the price increased to thirty, and when the lender came to require his wheat the borrower said: "I have no wheat, but wine for thirty dinars," then, if he possesses it he may do so, as he took from him a trade article and repays him with a trade article, but if not he will be compelled to give him the value of the wheat at the increased price (*i.e.*, thirty dinars), and this appears usurious. Said Rabha to him: If so, why does the Mishna state, Give me my wheat (the value of which when he bought it was only a golden dinar; the borrower of the wheat is considered now a seller and the buyer has not made a drawing or paid any money for it that he should acquire any title to it, hence the seller may retract and give him back twenty-five dinars; we must then say that the lender claims thirty dinars, the value of the wheat he sold him first): * then let the Mishna state, Give me the value of my wheat? Read, then, "The value of *my* wheat." But does not the Mishna state: "Which he desired to sell," and according to your theory it should state: "Which he sold"? Read, "Which I *sold*." But the further expressions: "I accept it for thirty," "so is the

* The text here is both very short and complicated. The commentators are silent. We therefore were compelled to give our own explanation.

market price," could not be explained in accordance with your theory? Therefore said Rabha: When I will die, R. Oshia will come to meet me, as I try always to explain his Boraithas in accordance with the Mishnayoth. And there is a Boraitha taught by the same, as follows: "If one claims a mana and stands at the barn of his debtor, saying, Give me money, as I desire to buy wheat for it, and he answers: I possess wheat and can furnish it to you at the market price (and the lender accepts it), then, when the time to sell the wheat arrived, and he required his wheat for sale, as he wants to buy wine to sell it in season, and he says: I possess wine, buy it from me at the market price (and he again accepted), and when he came, in season, requiring the wine for the purpose of selling it to buy oil for the season, and he says: I have also oil and you can buy it from me at the existing market price—in all these cases, if he possesses the articles, it is allowed; if not, it is prohibited, because it appears usurious." And the expression in our Mishna: "If one buys wheat," means that he bought it for his previous loan.

Rabha said: From the above cited Boraitha three things may be inferred: (*a*) That with a loan articles may be bought at the existing price to deliver in instalments although the price may be increased, and it is considered as though he would give him cash—not in accordance with R. Hyia's statement above, that it is not so considered; (*b*) provided the article is ready by the debtor for delivery; and (*c*) R. Janai's statement* that there is no difference between the article and the money; as it is allowed to accept an article bought at the existing price even if afterwards the price increased, so is it also allowed to accept the difference in money.

The same said again: As the above theory is correct, there is no difference even if the article is not ready for delivery by the seller to buy of him at the existing market price, provided he takes the money now (as he can buy the article everywhere, it is considered as if it were ready for delivery).

R. Papa and R. Huna b. R. Joshua raised an objection to his statement (*supra*, p. 151): "In all cases, if he possesses; . . . if not, it is prohibited." And he answered: (What comparison is it?) There is a loan and here a sale.

Rabha and R. Joseph both said: The rabbi's decision that one may buy articles to deliver them in instalments at the exist-

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* See also First Gate, p. 232, before Mishna V., Rabbi's statement.

ing market price (in the larger cities, without fear that it appear usurious *) is because the buyer may say: I do not consider it favorable even should the price increase during the year, as for the cash I have forwarded to the seller I could buy in the cities of Hini and Shili, at a lower price than in the larger cities, all I need for this year. Said Abayi to R. Joseph: According to thy theory, it should be allowed to lend a saah of grain in the time when it is cheap, to return the same measure to him when it is dear, as the lender can say: I do not see any favor in this, as I could keep the wheat in my store until that time (and it is said above that this is not allowed, as it appears usurious). And he answered: There is a loan, but here is a sale. Said Ada b. Abba to Rabha: After all, it is still an advantage to the buyer, as he would have to pay the broker (*i.e.*, has he not the advantage of saving the broker's fee?). And he rejoined: It treats when he pays the same to the seller. R. Ashi, however, said: A man's money does the brokerage for him (*i.e.*, dealers come to the wholesaler directly).

Rabba and R. Joseph both said: One who buys grain in the time when it is ripe, but before it was harvested (when the market price is not yet fixed, and it is said above that from him who possesses, it is allowed to buy even before the price is fixed), he must convince himself by seeing the grain at the barn of the seller. (Asks the Gemara:) To what purpose? If to acquire title, the seeing would not do (without drawing it)? And if in case of retracting by the seller he should be classified with those who have to accept the curse (mentioned in Chap. iv., Mishna I.), is the same not the case if he has not seen? Yea, it is for that purpose; but, usually, he who buys grain in the above-mentioned time buys it of two or three farmers; and then, if the farmers have seen him at their barns, they are sure that the buyer relies upon them. But otherwise the farmer may say: I thought you found better ones and you did not care any more to take mine, therefore I sold it out. Said R. Ashi: Now, coming to the conclusion that the relying upon him is the reason of the above statement, it is sufficient even if he had told him: I rely upon you at any other place.

R. Nahaman said: The rule of usury in transactions is:

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* This also is our own explanation, as without this there is no meaning. Meyer of Lublin tries to give some explanation to this paragraph, but he makes it still more complicated.

If he sells him the article cheaper because it is not yet in his hand, it is forbidden. He said again: If a wax dealer says to the buyer: "I need money and you can get now five wax cakes for a zuz instead of the fixed price, which is four," if these cakes are ready for delivery he may do so, but not otherwise. Is this not self-evident? Lest one say that the same is the case when the wax dealer has to gather his cakes placed with others' in the city, as this is similar to the case: "Lend me . . . until my son will return with the keys," mentioned above, he comes to teach us that this case, that they are not collected as yet, is not to be considered if they would be in his hand.

The same said again: If one found a surplus in the small coins he borrowed, he must return him the surplus, provided such an error is usual. If, however, it could not be supposed as an error, he may consider it a present of his friend. What error is to be considered usual? Said R. Aha b. R. Joseph: To the number of tens and fives (*e.g.*, if he had to give him two score and he found twenty-one or twenty-two, or he had to give him twenty-five and he found twenty-six or twenty-seven; but not if he found twenty-five instead of twenty). Said R. Aha b. Rabha to R. Ashi: But if the lender was a miser, so that a present from him is unimaginable, how then? And he answered: Then it can be supposed that with this he returned him the sum which he robbed him of some time ago, as we have learned in the following Boraitha: "If one has returned robbed money with an account of other money he had to give him, he has done his duty." The former questioned again: But how is it if he never did any business with him? And he rejoined: Even then it may be supposed that another one who robbed him of the same amount told him to do so, when it will occur that he will require a loan from him.

R. Kahana said: I happened to be at the college when Rabh had finished his lecture and I heard him saying: "Melons, melons," and did not know what he said about them. After Rabh left, the college men told me that he had said as follows: If one advanced money to a gardener for melons, to deliver to him thereafter, and his melons usually were the size of a span, the price of which was ten for a zuz, and he promised to give him the same number at the size of an ell for the advanced money, this agreement is of avail. Is this not self-evident? Lest one say that because they are growing from themselves it is allowed, he comes to teach that even then it is only when he possesses such. And according to whom is it? To the Tana of

the following Boraitha: "If one goes to milk his goats, to shear his sheep, or to take out honey and wax from his hives, and he offers to sell the products by the advance of money for a cheaper price, it is allowed. If, however, he says: 'I will sell you the above products to a certain quantity which will be produced in the future, it is prohibited.'" Hence, we see that although they grow from themselves it is, nevertheless, prohibited. Rabha, however, said the articles are not similar to the case of melons, as the same melons which are now small will become big by growing themselves, but milk, wool, or honey of the bees is not grown at all, as he takes the milk out to-day and on the morrow there is other milk instead, and the same is with the shorn wool and the honey. Therefore, the above-mentioned case of the melons is permissible.

Abayi said: One may say to his comrade: "Take four zuz for a barrel of wine you possess, with the condition that if it should become sour you should be responsible, but if it becomes dearer or cheaper it should be charged on my account." Said R. Shrabia to him: Is this not a case in which the profit is to be very likely expected, and little loss from damage (*i.e.*, the increase in price is usual, and its becoming spoiled unusual, and there is a rule that in such cases it must not be done)? And Abayi answered: This would be correct if he would not accept in case it became cheaper, but since he accepted this also, both chances, of profit and damage, are alike.

MISHNA *II.:* A lender must not dwell in his debtor's house for nothing, or even for decreased rent, as it is usury.

GEMARA: Said R. Joseph b. Menjumi in the name of R. Nahaman: Although it was decided that one who occupies the court of his neighbor without his knowledge need not pay any rent (First Gate, p. 41); if, however, he said to him: Borrow me some money and dwell in my house, he must pay him rent. If however, while dwelling there for nothing he lent him any money, he need not pay. Why so? As the loan was not made previously for this purpose, it does not matter.

Abayi said: If a debtor who sold grain, four measures for one zuz, had to pay a zuz usury, and furnished to his creditor five measures for the same, then the court that levies the usury levies only four measures, as the fifth may be considered a present. Rabha, however, says: All the five must be levied, as all the five together came to hand by usury.

Abayi said again: If a debtor who owes four zuz usury has

furnished a garment to his creditor, when the court levies the usury it levies only four zuz, but not the garment. Rabha, however, maintains that the garment is to be levied, for the reason that people may say that the garment he wears is of usury.

Rabha said: If one claimed thirteen zuz usury, and at the same time he hired a court of his debtor for the same price which is worth only ten, when the usury is levied all the thirteen zuz are to be collected. Said R. Aha of Difti to Rabbina: Why should not the creditor claim: "Because the money was of a profit I did not care to give him three zuz more than the value, but now, when they levy the money, why should I be charged more than others?" And he answered: The owner of the court may say: "There is no difference, as so was my agreement and you accepted it."

MISHNA *III.:* Hiring may be increased, but not sale. How so? The owner may say to the hirer: "You can have this court for ten selas a year, if you give me the money in advance, but if in monthly instalments you have to pay one sela a month." It is, however, not allowed for the owner of a field to say: "If you advance me a thousand zuz you can have this field, but if by instalments, you have to pay twelve hundred."

GEMARA: Why are the two cases so different? Rabba and R. Joseph both said: Hiring is usually paid afterwards, and so if he pays him monthly he pays only what was due the last day of the month, as during the month he did not owe him anything, consequently there is no reward for waiting for the payment; and the lower price which he offered him, for paying in advance the money for all the year, must also not be considered usury, as the owner has a right to reduce the price for occupying his property. With sale, however, it is different, because the money must be paid with the act of the sale, and he acquires title immediately. Consequently, the increase of 200 for the instalments is usury. Said Rabha: The rabbis have investigated this matter to find its basis in the Scripture, and finally based it upon the verse [Lev. xxv. 53]: "Hired from year to year," which signifies that the hiring of this year is paid at the beginning of the next.

But if by instalments, etc. R. Nahaman said: It is allowed to increase the price of an article when the money is to be paid a certain time after delivering (provided he does not say: "If for cash, you will have it cheaper"). And Rami, according to others Uqba b. Hama, objected to him from the last part of our Mishna; and he answered: There he said plainly: "If you advance me

the money you will have it cheaper" (which certainly appears usurious). Said R. Papa (who was a brewer): I do so with my customers. I sell them on Tishri at the price of Nissan, thinking that to me it is undoubtedly allowed, as my beer would not get spoiled until Nissan and I am never in need of money (so that I should sell cheaper for cash), and I do only a favor to my customers by crediting them. Said R. Shesheth b. R. Aidi to him: Why should the master take the example of yourself and not of your customers? You should consider these circumstances, that if they would have money they would pay you at the price existing in Tishri? Said R. Hama: I do so in my business, and to me it is allowed beyond any question (Rashi explains that he was a wholesale dealer in many articles, and he sold them to the travellers at the market price of the large cities, with the condition that they should pay him when they returned, and he was also responsible for his goods on the way until sold; they, however, were allowed to buy articles for the money obtained and to sell them in other places), as they are pleased that I take all the responsibility of the goods until sold, and also that they are free of duty because the goods bear my name (the Persians used to free the rabbis of duties), and furthermore that my goods have the preference for sale, as it is announced in the market that no one can sell the same goods until mine are sold, because they bear my name.* The Halakha prevails in accordance with R. Hama, with R. Elazar (who says that usury is levied), and also with R. Yanai, who said above (p. 152) that there is no difference between the articles and the money.

MISHNA *IV.:* If one sold his field, taking a deposit and saying: "You may take possession of the field belonging to you from to-day, when you will bring the balance," such an act is not allowed. If, however, one has borrowed money on his estate with condition that if he will not repay within three years it shall belong to the lender, it belongs to the lender if not paid; and so did Baitus b. Zunin under the supervision of the sages.

GEMARA: But who uses the fruit in case he sold his field by a deposit? According to R. Huna, the seller; and according to R. Anan, the fruit must be deposited until the remainder is paid. And they do not differ. R. Huna speaks in case the seller told him he shall acquire title when he will bring the balance, and

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* This was usually done by the Jewish courts when a scholar came to their city with his trade, and with references from other courts.

R. Anan speaks in case he said, When the balance will be paid in time title shall be acquired by you from to-day.

R. Saffra learned in the Boraithas, treating upon usury, taught in the school of R. Hyia, concerning the statement of our Mishna: There are cases in which the use of the fruit is permitted to both, prohibited to both, permitted to the seller only.

And Rabha illustrated it thus: The first case applies when the agreement was that he shall acquire title for the amount of the deposit only; the second applies when he was told that if he will pay the balance in time, title to the property shall be given to him from to-day; the third applies, if he was told, A title will be given to you at the time when you will bring the balance; and the fourth applies if he was told, Title is given to you from now and the balance you owe me should be considered a loan.

According to whom is the statement of our Mishna that both are prohibited? Said R. Huna b. R. Joshua: At any rate, it is not in accordance with R. Jehuda, who said: If there is only one side of usury (*i.e.*, if, for instance, the buyer should not keep his promise, there would be no usury if the seller used the fruit) it does not matter. (The other parts of the above Boraitha, however, are in accordance with R. Jehuda also, as there is a certain usury without any doubt).

If one has pledged his house or field, and the lender said to him: "You may sell it to me for such and such amount, but if you sell it to another, you will have to add such and such an amount to my loan," this is usury. But if he says: "Should you wish to sell for its value, I shall have the preference," it is allowed. The same is the case if one has sold a house or a field with the condition that if he should have money thereafter, the estate should be returned to him; it is considered usury (as the money is considered a loan for which the lender uses the estate until the money is returned). If, however, the *buyer* says: "I will return it to you when you will have money," such an agreement is allowed. [And the above-mentioned R. Huna said that these two Boraithas also are not in accordance with R. Jehuda, as there is only one side of usury (*i.e.*, that should the seller or borrower not have the money necessary, there would be no usury) which is allowed according to his theory.] But what difference is there if the seller made the condition of returning when he will have the money, or the buyer made it? Said Rabha: That is, if the buyer said, "I will do so not as a condition but by my good will."

There was a man who bought an estate without any security —*i.e.*, that the seller did not take the responsibility to return him the money should the estate be taken away from him by the seller's creditors. Seeing, however, that the man looked downhearted, the seller said to him: "Why art thou grieved? Should it be taken away from you I will collect for you the fruit and the improvement." Said Amimar: This is only a gossip. Said R. Ashi to him: Your reason is, because this condition should be made by the buyer and not by the seller; does not the above Boraitha state that if the seller said, "I will return it to you, etc.," it is allowed, because such a condition ought to be made by the seller and not by the buyer? And Rabha explained this that only when the buyer says: "It is not a condition, etc.," from which it is to be inferred that if he did not add this it would not be considered as a gossip? And Amimar rejoined: Rabha means to say thus: As this condition should have been made by the seller, and it was not, then when the buyer says, "I will do it," it is to be considered as though he would add: "from my good will."

It was taught: It happened that a sick man wrote a divorce to his wife and she heard him sigh. Then she said to him: "Why do you sigh? If you will live I am yours." Said R. Zebid: It is to be considered a gossip only. Said R. A'ha of Difti to Rabina: And should it not be considered so, what harm could there be? Does it then depend upon her to make a condition in the divorce? That depends on the husband only. (And he rejoined:) Lest one say that, hearing her statement, the husband resolved to give the divorce upon this condition, he comes to teach us that it is not so.

If one has borrowed money on his estate, etc. Said R. Huna: The case is if the condition was made at the time the money was paid. If, however, it was made thereafter, title is acquired according to the amount paid only. R. Nahaman, however, maintains that even then title is acquired on the whole estate; and R. Nahaman acted accordingly in a case of the Exilarch. R. Jehuda, however, tore the document, and the Exilarch told this to R. Nahaman, and he said: (It does not matter;) a boy tore it as, concerning jurisprudence, all are considered boys in comparison with me. Afterwards, R. Nahaman retracted from this statement, and said that even when the condition was made at the time the money was given, it is of no avail. And Rabha objected to him from our Mishna: "If he will not repay within three years . . . it is his." And R. Nahaman answered: I say that an

*asmakhta** gives title. Minjumi, however, maintained that it does not. But then our Mishna contradicts Minjumi? He interprets our Mishna as treating of when the seller said: Title should be acquired by you from now. Said Mar the Senior and the Junior, sons of R. Hisda, to R. Ashi: So said the sages of Nahardai in the name of R. Nahaman: An *asmakhta* gives title only in time but not thereafter. And R. Ashi rejoined: This would not be correct, as there is a rule that a thing which gives title in time gives also thereafter. Perhaps you mean to say thus: If the borrower sought him within the time of the loan and told him: Acquire title on it, as I will not redeem it any more, then title is acquired; but if he said the same to him after the time has elapsed, it counts nothing, as it is to be considered that he said so only because he was ashamed for the delay of the payment. (Says the Gemara:) In reality, title is not acquired even within the time, as the saying of the borrower is to be considered as a postponement of time only, as he would not like to be troubled when the time of payment arrived.

R. Papa said: The *asmakhta* sometimes gives title and sometimes does not. If, *e.g.*, he finds his debtor on the day of payment drinking beer, and not caring about the payment of his debt, it is to be considered that the debtor does not intend any more to redeem his pledge, and then title is acquired by the lender; but if he found him on that day searching for money, title is not acquired. Said R. A'ha of Difti to Rabina: Even in the first case title should not be acquired, as it may be the debtor drinks only to drown his grief, or he relies upon some one who assured him that he would furnish him money. Therefore said Rabina: If we see that the debtor does not care to lower the price of his goods for the purpose of collecting the money due, it must be considered that he does not care any more for the pledged estate, and title is acquired. And the above R. A'ha rejoined: Even this proves nothing, as it may be he does not want people to know his circumstances, which would cause a reduction in value of his estate. Therefore it may be assumed that R. Papa's statement was thus: If the debtor was particular on that day with his estate not to have it sold, even for its value, it is certain that he does not care

* The term *asmakhta* is very difficult to translate into English with a term of the same meaning. The literal translation of *asmakhta* is "relying upon," which is to be understood: "He acquires title because he relies upon it"; and therefore we use the term *asmakhta* in the text without explanation. Jastrow tries to explain this term at length in his dictionary. See there, Part I.

for the estate pledged, and title is acquired. R. Papa said again: Although it is decided by the rabbis that an *asmakhta* gives no title, it is nevertheless considered a hypotheca of which he should collect his money. Said R. Huna b. R. Nathan to him: Has then the debtor at the time pledged said: "Acquire title on the estate to the amount of my debt"? Said Mar Zutro bar R. Mari to Rabina: And even if he said so, would the title be acquired? The stipulation of the pledge was that if he does not repay him within three years then he may collect from this estate, and this is again only an *asmakhta*, which gives no title. Therefore the hypotheca mentioned by R. Papa is to be explained, that the stipulation was thus: "From this estate you shall collect your money within three years (*i.e.*, I shall sell out from it for your money). However, should the money not be collected within that time, all the estate shall belong to you after the elapse of above-stated time."

There was a man who sold an estate with security, and the buyer questioned: "Should this estate be taken away by your creditors, will you then repay me from the very best of your estates?" And he answered: "From the very best of my estate I will not, as I need it for myself; your money, however, will be collected of other best estates I possess." Finally it was taken away, and the very best estate of the seller was overflooded. R. Papa (before whom this case was brought) thought to collect the buyer's money from the best estate still left in his possession. (The seller, however, claimed that the agreement was, he should repay him from the best but not from the very best; and as now the very best is overflooded, this next best is now the very best, which he needs for himself, so he has a right to repay him from the estate lower in value.) Said R. Papa to him: "This estate which was secured is still in your possession, and you have to repay from it."

Said R. A'ha of Difti to Rabina: "The claim of the seller (just explained) is a just one, as this estate which is not overflooded is now his very best, which according to the agreement was not security." Rabi b. Shiba was a creditor of R. Kahana, who said to him: "Should I not pay you at a certain time, you may collect your money from this wine." Finally the wine became dearer, and R. Papa was about to say, that the law of *asmakhta*, which gives no title, applies only to real estate which was not for sale. This wine, however, which was for sale, is considered money. Said R. Huna b. R. Jehoshua to him: "So

was said in the name of Rabba: 'Everything made with a stipulation, gives no title.'" R. Nahaman said: "As the rule that an *asmakhta* gives no title is accepted by the rabbis in case of a loan with pledged estate for three years, if the lender took possession of it and used the products he must return both."

(Said the Gemara:) "Shall we assume that R. Nahaman holds that a relinquishment by an error is not to be considered? Was it not taught concerning one who sold out the products of his tree, that, according to R. Huna, he may retract from the sale before the fruits were produced, but not afterward; and according to R. Nahaman he may, even in the latter case?" He, however, said: I admit that if the buyer used already the products in question, it is not to be collected from him (hence we see that a relinquishment by an error is considered?). (The answer was:) There was a sale, but our case is a loan, and the lender used the products for the interest of his loan, which is considered direct usury, which is to be collected by the court.* Rabha said: I was sitting before R. Nahaman at the time he said, "I admit, however," etc. (just quoted), and was about to object to his statement from the law of cheating mentioned above, that the amount cheated must be returned, although it was done willingly. (*Supra*, p. 126.) He, however, looked at me and understood my intention, and he therefore brought as a support to his statement the following Mishna (Kethuboth ii., Mishna 6): "She who refuses to cohabit with her husband, etc., is not entitled to her marriage contract." (The compensation for usufruct, etc.), from which it is to be inferred that although her husband has not any right to use the fruit belonging to her, it is not to be collected from him if he has done so. (Says the Gemara:) In reality, however, both the objection and the support do not hold; there is no objection from cheating of which the cheated one was not aware that there is such, that he should relinquish it; and there is no support from the woman in the Mishna cited, that each of the women mentioned in the cited Mishna would be pleased to be counted among the married ones.

There was a woman who said to a certain man: "Go and buy for me an estate from my relatives." He did so. The seller, however, said to him: "I sell it to you with the stipulation that

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* This is the explanation of Rashi. Tosephath, however, objects, saying "that using fruit is not considered direct usury, but indirect, which is not to be collected," and therefore they give another explanation to this paragraph. See there.

when I shall have money, I shall repay you and take back my estate." And the messenger answered him: "You and Navla* are brother and sister and you can settle this matter between you." Said Rabba b. R. Huna: "Such an answer may be considered satisfactory, that the seller should rely upon it, and therefore he doesn't give title." (Questioned the Gemara:) "According to this decision, the estate certainly must be returned; but how is the law with the products if she used them? Is it considered direct usury, which is levied by the court, or indirect, which is not?" Said Rabba to R. Huna: "It seems that it is considered indirect," and so also said Rabha. Said Abayi to Rabba: "How is the law with an estate pledged without any stipulation, when the lender has used the fruit? Shall we assume that the reason, in the above case, which was considered indirect, is because it was not determined at the sale she should use the fruit, and the same is the case here? or it is not to be compared, because there was a sale, and here it is a loan?" And he answered: "This reason holds good, in this case also." Said R. Papi: Rabina acted in his court not in accordance with Rabba b. R. Huna's statement, but has reckoned the value of the fruit used and collected.

Mar b. R. Joseph, in the name of Rabha, said: "In places where it is the usage for the lender to use the fruit from a pledged estate without any deduction of the debt, and the borrower has a right to return the money at any time, then is the law as follows: If the lender has used the products to the extent of the amount of his loan, he may be ejected from the estate; if, however, he has used more than the amount of the loan, the court may not collect from him, neither may it be deducted from another debt which the debtor owes him. If, however, the estate belongs to orphans, then if he has used more than the amount due, it is to be collected, or deducted from another debt they owe him." Said R. Ashi: "As you came to the conclusion that in case he has used more than the amount due we do not collect from him, we do not eject him even if he has collected the amount of the money loaned, unless he is paid the money issued; because the ejecting is the same as if it would be *collected* for the product consumed by means of sale, and not by means of deducting from his loan, and this is not to be done with indirect usury." And R. Ashi

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* Rashi says that he has seen in the answers of the Gaonim that Navla is an Aramaic expression, which was used in brotherhood; he, however, maintained that so was the name of the woman who sends the messenger to buy the estate.

acted accordingly in a case of orphans irrespectively of age. Rabha R. Joseph, in the name of Rabha, said: In the places where it is the usage to pledge estates without stipulations, it is advisable that one shall not use the fruit unless by way of deducting something of the debt, as then it is considered as if he would sell him the products for the amount deducted, and it appears not usurious. A scholar, however, must not do even this, but he must determine at the time of the loan how much he may use. But this would be correct only to him who holds that a determined quantity is allowed; but to him who holds that even this is not allowed, what can be said? [And it is known that R. Aha and Rabina are the two who differ on that point.] Let us then see. What kind of a determination is meant? If, *e.g.*, the lender stipulated, "I will use the fruit during five years without any deduction; at the elapse of that time, however, I will credit you with all products." Such a determination, however, is opposed by some sages, who maintain that as soon he uses the products without any deduction it is direct usury; we must therefore say that the determination mentioned by Rabha means, if he said: "During the first five years I will deduct from the amount due so-and-so; at the elapse of this time, however, I will credit you with all products." R. Papa and R. Huna b. Yehosha both said: "The pledged estates in question, a creditor of the lender has no right to collect from in case he dies" (because the deceased has nothing in the body of the estates, and the using of their products is considered movable property, which is not secured to a creditor after the death of the debtor, although it may be collected from him as long as he is alive; and the reason is that as long as he is alive, although movable properties are not secured to the creditor, the court has a right to levy on them for a debt for which the debtor has promised to repay, even from the garment of his body; but after his demise his orphans are not obliged to repay their father's personal debt if it were not secured by real estate). And also a first-born of the lender can not claim the double amount prescribed to him biblically, for the above reason, and the Sabbatical year makes the debtor free, as it is not considered a pledge, since the borrower has a right to eject the lender from the estate after the product was used to the extent of the amount due. In places, however, where it is not customary to eject the lender from the estate in question, a creditor and a first-born may claim their right on it, and the Sabbatical year does not make it free. And Mar Sutra, in the name of R. Papa, said that, as to the estate in ques-

tion, where it is the usage to eject the lender, he may be ejected even from using dates that were blown down by wind on the rush mats. If, however, the lender has already picked them up from the rush mats, and put them in his vessels, title is acquired. And according to him who says that when the vessels of a buyer are placed in the care of the seller for the purpose of putting in them the things bought it gives title to the buyer even in his absence, if the dates in question were put in the vessels of the lender by some one they give title to him even if he himself has not picked them up. It is certain that in countries where ejection is the usage, and the lender stipulates that he shall not be ejected, it is of avail; but how is it when the lender made the stipulation that he may be ejected, in places where ejection is not the usage—is it then necessary to enforce this by the ceremony of a *sudarium* or not? According to R. Papa it is not necessary, and according to R. Shesheth b. R. Aidi it is, and the Halakha so prevails.

If the borrower says to the lender: "Stop using the fruit, as I am about to furnish the money due," he must do so immediately (in places where ejection is usage). If, however, he says: "Stop using the fruit, as I am making efforts to get the money"—according to Rabina, the lender may not listen to him, and according to Mar Sutra, the son of R. Mari, he has to, and so the Halakha prevails.

R. Kahana, R. Papa, and R. Ashi did not use the fruit even by deduction; Rabina, however, used to do so. Said Mar Zutra: "The reason of him who does so is, because he compares this to the biblical case [Lev. xxvii. 16], that although the fruits of the field mentioned there are of great value, he may redeem it for the sum of four zuz a year,* and the same is the case here (he may do so because he is not certain that there will be any products of the estate, consequently, he may buy it for a small price). However, he who does not allow this to be done holds that this case is not similar to the biblical case mentioned above—there is a sanctification for which the Merciful One allows it to be redeemed for such a trifle; but here it is a loan, and it appears usurious." R. Ashi said: "I was told by the elders of M'tha Mechasia (Suria) that an anonymous pledge holds good one year only; *i.e.*, that the borrower can eject the lender only after the elapse of a year, but not earlier." He said again: I was told by the same

* It is according to the estimation prescribed in the Scripture in this paragraph; the Talmud counts it according to the money used at that time.

authorities that a pledge is called *mashkhantha*, as the lender is considered from that time a neighbor (shakhan) to the borrower; so that if the borrower has to sell his estate, and the lender is willing to give the same price as offered by others, he has the same privilege as the preëmptor of an estate attached to that of the seller, to whom the laws give privileges to obtain it for himself in case he offers the same price as others.

Rabha said: The Halakha does not prevail, as the inhabitants of Papuna, who sell their goods on instalments for the same reason as R. Papa mentioned above (p. 156), and not as the inhabitants of Mahuza, who used to write in their notes the profit which they supposed the borrower would derive from the money taken on half profit, as who can assure that such a profit would be derived? Said Mar b. Amaimar to R. Ashi: "My father used to do so, and nevertheless when they claim that such a profit was not derived, he trusted them;" and he answered: This holds good only when they came to *him* with that claim; but how would it be in case he should die and the note falls into the hands of his heirs? [R. Ashi's talk was like an error which proceedeth from the ruler (Eccles. x. 5), and Amaimar died.] And also not as the farmers of the city of Narshah, who used to lend money to poor farmers on their land, and thereafter rented it to them for so-and-so many kurs yearly, and so they wrote in their contracts: "So-and-so has pledged his field to so-and-so, and afterwards he rented it for so-and-so many kurs." Had, then, the lenders acquired title on the field to be justified to rent it out? It is then direct usury. However, now that they write in their agreements: "I have bought from so-and-so such a field for so-and-so, and it was under my control such length of time, in which I have used the fruit and have deducted from the money paid, and thereafter I rented it to the former possessor for so-and-so many kurs yearly"—this is allowed, for the purpose not to shut the door for borrowers. (Said the Gemara:) After all, it is direct usury, as it can happen that the field should not yield so much product as agreed, and the lender takes the kurs of grain as interest for his money.

MISHNA *V.:* One who possesses articles for sale must not give them to a retail dealer to sell, with the stipulation to receive half profit from the sale, charging him the articles at wholesale market price. One must also not furnish some one with money in order to buy and sell articles for it, for half profit, provided he pays him separately as a laborer for his trouble. It is also not

allowed to hatch hens for half profit, and also not to appraise calves and foals, according the value after two years, and making a half of it a compensation for the raising of them. Should it happen, however, that they die (the raiser must suffer half of their loss), provided the raiser is paid separately for his trouble and food. One, however, may accept the above animals without any stipulation for half profit. And then they shall be kept calves until they become threefold and an ass until it is fit for carrying burdens.

GEMARA: A Boraitha in addition to this Mishna states "as a laborer," and Abyi explains "as a laborer of this profession."

The rabbis taught: "How much should he be paid separately? According to R. Meier: More or less, but it must be stipulated between them; according to R. Jehuda, it is sufficient even if he gives him a meal or some fruit. R. Simeon b. Johai, however, maintains that he should receive the amount a laborer is entitled to."

The rabbis taught: "Goats, sheep, and all other animals which are fed but do not labor, must not be appraised for the half. R. Jose b. R. Jehuda, however, says: Goats and sheep may, as the raiser has the milk and the wool for use, and they yield wool by being shorn, by passing through water, and by being plucked (in passing bushes, etc.); and also a hen, because she is laboring for her food (as she lays eggs)." (Says the Gemara:) And according to the first Tana (of the Boraitha), their milk and wool are not sufficient for his trouble and food? If agreement was that the raiser shall use milk and wool for himself, all agree that it is sufficient; the point of their differing is if it was agreed that the raiser should use only the whey of the milk, and whey and refuse of wool; the first Tana holds in accordance with R. Simeon b. Johai, who demands the full payment of a laborer, and R. Jose holds in accordance with his father, R. Jehuda, who says above, that one meal suffices.

The rabbis taught: "A woman may say to her neighbor who has eggs, 'You may give me four eggs and I'll let my hen sit on them for two little chickens she will hatch.' If, however, she says, 'I have the hen and you the eggs, let us divide the little chickens,' it is not allowed according to R. Simeon. R. Jehuda, however, allows this."

The rabbis taught: "In the places where it is the usage to pay the raiser for carrying the calves on his shoulder, it may be appraised, and it is not necessary to act differently to the custom of the country." R. Simeon b. Gamaliel said: "A calf and a

foal may be appraised with their mother and without any separate payment, even in those places where they pay separately for carrying calves (as the mothers are with them, there is no trouble in carrying them, and they are also fed by their mothers)." Said R. Nahaman: "The Halakha prevails in accordance with R. Jehuda, with R. Jose his son, and with R. Simeon b. Gamaliel." The sons of R. Ilish were summoned for a note which was issued by their father for half profit and half loss. Said Rabha: "R. Ilish was a great man, and he would not have issued a prohibited document; the note, therefore, may be explained that if his partner desired to obtain the half profits, then he had to suffer two-thirds of the loss, and if R. Ilish would have to suffer the half of the loss, then his partner would take two-thirds of the profit for his trouble." Said R. Kahana: "I told this to R. Zebid of Nehardae, and he rejoined: (It is not necessary to give the above explanation) about the note of R. Ilish, as it may be R. Ilish had some benefit from his partner, and it is in accordance with R. Nahaman, who said that the Halakha prevails with R. Jehuda; and I answered him: It was not taught by R. Nahaman, 'the Halakha prevails,' but the system of the above-mentioned sages is one and the same, and it seems to be so from his expression, 'R. Jehuda, R. Jose his son, etc.' Should he desire to state that the Halakha prevails according to them, he would teach the Halakha prevails in accordance with R. Jehuda, who is more lenient than all others."

Rabh said: "If one gives a calf for raising, with the stipulation that the profit and loss shall be equally divided, and besides a third increase of the present value should belong to the raiser, it is allowed." Samuel, however, maintains: "How would be the case if there should be no increase? Should then the man labor for nothing? Therefore he must fix a dinar for his labor." But Rabh himself is also of this opinion, as he said that the head of the calf belongs to the raiser. Is it not to assume that the head is an additional compensation to the third increase, said above? Is it not for the purpose that, should there be no third increase as agreed, he takes for his labor the head; hence here is the fixed dinar which Samuel desires? Rabh's decision that a third increase suffices without any other compensation means when the raiser has his own cattle to raise, as people say: "It is the same trouble to feed one as many."

R. Elazar of Hagruniah bought a cow which he gave to his gardener for raising, and gave him besides the half interest also

the head for his trouble. Said his wife to him: "If he would be an equal partner to you by giving the half money of the half cost he would give you the אַלְיָה* in your share." Afterwards they bought one in partnership and divided the אַלְיָה and R. Elazar said: "Let us divide also the head." Said his gardener: "When you issued the whole amount for the animal, I took the whole head to myself, and now when I have the half money in it, I shall take a half only?" R. Elazar answered: "When the money was my own, if I would not add a little to your share it would appear usurious; but now we are equal partners, and if you claim you had more trouble than I, the food for it was used from my garden, and while you were engaged therein, there was not much trouble feeding it."

The rabbis taught: Until what time must the raiser trouble himself with the appraised animal given to him for raising? Symmachos said: "With mules eighteen months, with asses twenty-four months, and if one desires to divide within that time, his partner may prevent him, for the years are not equal; as in the second year the trouble of feeding is more than in the first." There is another Boraitha: "Until what time must one trouble himself with the offspring of the appraised animal? With little animals, as goats and sheep, thirty days, and big animals, fifty days." R. Jose, however, said: "With little animals, three months, as their teeth are small, and he has to see what food is fit for them, and from that time further on the raiser takes a half of his value and a half of the increase belonging to his partner (as he takes the same of the mother)."

R. Menasya b. Gadah took his half and half of the increase of his partner; when he came before Abayi, he said to him: Who was the appraiser? [Perhaps the appraisement was not correct, and, secondly, this city is counted among those where it is customary to raise the offspring until grown up, and there is a Mishna that where the custom is to do so no change is to be made.]

There were two Samaritans who had done business with each other. Afterwards one of them divided the money without knowledge of his partner, and the case was brought before R. Papa, and he decided that his act was correct, as R. Nahaman

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* The term in text is *alitha*. Rashi explains *aliah*, which means the fat of the tail. However, it seems to us this is correct only of a sheep, but not of a cow; it may be, however, that they bought a sheep in partnership.

said that cash money may be considered as divided. The next year they bought wine in partnership, and one of them divided without knowledge of his partner, and the case came again before R. Papa, who asked: Who has appraised for you? Said the plaintiff to R. Papa: "It seems to me that the master is partial" (as last year he decided in his favor, and also in this case). Said R. Papa: "Why then? Last year you did not complain that your partner took the better coins and left you the worse ones, and as there was cash, which need not any appraisement, he had the right to divide without your knowledge; but in this case, everybody knows that there is a difference between one kind of wine and another. How could you do it without knowledge of your partner and without any appraisement by a specialist?" It is mentioned above, R. Nahaman said money is considered as if it would be divided; however, this is only if the coins were equal, as, *e.g.*, all of them were circulating ones, or if old coins, which have more weight but are not in frequent circulation; but if they were of both kind, it must not be done without knowledge of the partner.

R. Hama used to rent zuzes daily for the smallest coin for each zuz, and he lost his money. [He thought that because he had not given it as a loan, but as a lease, it is allowed to do so as with another erub; in reality, however, it cannot be compared, as the same erub is to be returned, and if it was spoiled it is recognized; but here the same zuz is not returned, as he took it for business and returned him another one, and therefore it is considered a usurious loan.]

Rabha said: One may say to his neighbor: "I will lend you four zuz to keep for a longer time with the stipulation that you shall lend to so-and-so a zuz;" as the law has prohibited only usury that came direct from the borrower to the lender. The same said again: One may pay money to any one for giving a good reference to the money broker in order to borrow money from him. As Abba Mar, the son of R. Papa, used to take wax vessels from the wax dealers for reference to his father, that he should lend them money; and when the rabbis told R. Papa that his son took usurious money, he answered thus: Such a usury he may take; the law has forbidden only usury which comes from the borrower to the lender. Here, however, he is paid for his reference, and this is allowed.

MISHNA *VI.:* A cow, an ass, and all animals which are laboring for their food may be appraised, that the increase shall

be divided equally. In the places where it is customary to divide the offspring while they are yet small, it should be so done; and where it is customary to raise the offspring until they are grown up, it should be so done. R. Simeon b. Gamaliel said: "That a calf and a foal may be appraised with their mothers." One may say to a farmer: If you would lend me some money which would enable me to manure your field, I shall give you twelve kur of grain for it, instead of the ten you demand; and the farmer may accept it without fear of usury (as the kurs added are considered for the use of a manured field).

GEMARA: The rabbis taught: This which is said above is allowed only with a field, but not with a store, and not with a boat; *i.e.*, the hirer must not increase the price for rent, in case the owner lends him money to buy stock for sale, or to buy a cargo for his boat. Said R. Nahaman, in the name of Rabba b. Abuhu: It may happen that the same should be allowed to be done also with a store if he lends money to paint and decorate it, in order to draw customers; and also with a ship, in order to improve it with masts of which the hirer has the benefit in that it will sail faster; and if he borrows money for this purpose, he may increase the rent of the above-mentioned, and it is not considered usury, as the owner may raise his rent for a decorated store and an improved boat.

Rabh said: "One may rent a boat with the condition that, should it break, the hirer is made responsible." Said R. Kahana and R. Asi to him: "If he takes rent, he, the owner, must be responsible for damage, and when the hirer is responsible for it, then he must not pay rent." Rabh was silent. Said R. Shesheth: Why was Rabh silent? Was he not aware of the following Boraitha, although it was said that an iron sheep must not be accepted from an Israelite, *i.e.*, one must not both be responsible for the article hired, in case it becomes injured while laboring, and at the same time pay rent for it; but he may do so with a non-Israelite. It was said, however: One may say: I take your cow for the price of thirty dinars in case it will die; but all the time it will be alive in my hands I will pay you monthly a salah for her labor. This is allowed, because the appraisement of the cow was in case she is dead, but not when alive. Said R. Papa: The Halakha prevails that a ship may be hired for rent and at the same time the hirer should be responsible, and the custom of the sailors was that they pay rent when they take possession of the boat, and pay the value of the damage in case such occurs. Is

this then depending upon custom (as he must pay for the whole boat in case it breaks, then it is a sale, and the rent paid should be considered usury for awaiting of payment)? Because it was said in the above Boraitha that it may be done with a cow, as the appraisement was after death, the same is the case here. And as this law was accepted, it became customary.

R. Annan, in the name of Samuel, said: Money belonging to orphans may be lent for usury. Said R. Nahaman to him: Because they are orphans should we permit prohibited things for them? Orphans who are consuming that not belonging to them may go to their bequeather; but as you said the Halakha in the name of Samuel tells me the fact, you have seen that Samuel did so (as it cannot be that Samuel would declare that such an unlawful Halakha should be practised). And he answered: There was a copper kettle belonging to the orphans of Mar Uqba, which was under the control of Mar Samuel, who used to weigh it at the time of giving it to the hirer, and did the same at its return; and in case of the weight diminishing, got paid for it besides the payment for using it. Hence if it would not be allowed to lend the money of orphans for usury, how could he demand both to be paid for the diminished weight and at the same time to take rent for using it? Said R. Nahaman: "Such a thing may be done even with bearded orphans, as the copper of the kettle decreased in value by using it, for which the orphans get no separate payment, as they take the value for the diminished copper only." Rabba b. Chila, in the name of R. Hirda, according to others, R. Joseph b. Hama, in the name of R. Shesheth, said: "Money belonging to orphans may be used for a business that is very likely to bring profit, and with small chance of loss."

The rabbis taught: "One who lends money for a business which is very likely to bring profit with little chance of loss, is wicked; for one which is likely to bring loss and far from profit, is pious." Equal to both, this is the custom of every just business man. Said Rabba to R. Joseph: How, then, should be done with money belonging to orphans? And he answered: "It shall be deposited in court, and the court shall furnish them with means for livelihood from time to time, according to their need." But if so, then the whole amount will be consumed? Said R. Ashi: "We look for a man who is rich, trusted, listens to the Law, and never accepts a rebuke from the rabbis, and we give the money to him by the court for use in a business which is likely to bring profit with small chance of loss."

MISHNA *VII.:* An iron sheep must not be accepted from an Israelite (*i.e.*, to lend money with the understanding that the debtor shall always be responsible for it, and at the same time he shall pay the half profit it brings), as it is direct usury. This, however, may be done with non-Israelites, as it is allowed to lend them, and borrow from them, for usury. This is also allowed to be done with a proselyte who obligated himself not to worship idols, but did not obligate himself to observe the Hebrew laws. An Israelite may lend to his race money belonging to non-Israelites for usury, provided the latter are aware of it, but not otherwise.

GEMARA: Is it to be assumed that the iron sheep in question is considered under the control of the acceptor? Then it would be a contradiction to the following Boraitha: "If one accepted 'iron sheep' from a heathen, the offspring are free from the law of first-born; *i.e.*, that if for the money in question was bought cattle, which brought young ones, the first-born must not be given to the priest, although it was in the hand of an Israelite (hence we see that it is considered under the control of the lender and not of the acceptor, for if it were under the control of the latter, why should the first-born of the half belonging to the Israelite be free from the above-mentioned law?). Said Rabha: The reason is, because, should he not repay the money, the heathen would take possession of the cattle, and if even this would not be sufficient he would also take the young ones; and so it is considered that the hand of a heathen rests in this case, and under such circumstances the law of the first-born does not exist.

It is written [Prov. xxviii. 8]: "He that increaseth his wealth by interest and usury, will gather it for him, that will be kind to the poor." What is meant by the expression, "that he will be kind to the poor"? Said Rabh: For example, as the King Sabura, who collects money from the Israelites for the purpose of distributing it among the poor of the Persians. Said R. Nahaman: Huna told me that not only usury-taking from an Israelite is meant, but also from a heathen; and Rabha objected this statement from [Deut. xxiii. 21]: "From an alien thou mayest take interest"; and he answered: The expression in Hebrew is *tashikh*, which means you may give him interest if you need money and you cannot get it without; but to your brother (an Israelite) you must not do so under any circumstances. But is it not written plainly further on: "But from thy brother thou shalt not take interest?" It is written to show that he who does so transgresses both a positive and a negative command.

ment. He objected again from our Mishna, which states that with a non-Israelite it is allowed. Said R. Hyya b. R. Huna: The Mishna allows to do so only for the need of his livelihood, but not more than he needs, as the rabbis had prohibited the taking of usury from all mankind.

There are some who applied the above statement of R. Huna to the following: R. Joseph taught: It is written [Ex. xxii. 24]: "If thou lend money to my people to the poor by thee," which signifies, if there is one of thy people, and an alien, the former is to be preferred. If there were a poor and a rich man, the poor is to be preferred; poor of thy city and poor of another one, the former has the preference. And to the question, Is it not self-evident that an Israelite is to be preferred? said R. Nahaman: Huna told me that it means that an Israelite should be preferred even if he can take usury from a heathen, and to the Israelite he must give it for nothing.

There is a Boraitha: R. Jose said: Come and see how the usurers are blind. If one calls his neighbor "wicked," his neighbor tries to take revenge on him as soon as he is able to do so, and the usurers bring witnesses, a scribe, a pen and ink, and write and sign that so-and-so reasons away the God of Israel (who has prohibited the taking of usury).

There is another Boraitha: R. Simeon b. Elazar said: One who has money and lends it without usury, to him applies the verse [Psalm xv. 5]: "That putteth not out his money for interest and taketh no bribe against the innocent. He that doeth these things shall not be moved to eternity." Which signifies that he who takes usury will lose all his possessions. But is it not a fact that they who do not take usury are also stricken with poverty? Said R. Elazar: The latter are to be raised again, but those who take money, if they fall will never rise again.

The rabbis taught: It is written: "Thou shalt not take of him usury or increase" [Lev. xxv. 36], but thou mayest be a surety for him. A surety for whom? For the lender* who is an Israelite? Is there not the following Mishna: The following transgress a negative commandment: the lender, the borrower, the surety, and the witnesses?—*i.e.*, to an alien. But is it not a fact that the aliens summon the surety first? Hence it should be considered that the surety takes usury from him. Said R.

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* *I.e.*, the lender shall not collect more than is due to him in case the debt is paid in time.

Shesheth: It speaks of when the alien has promised that in case of a suit he shall obey the decision of the Jewish court. But if so, then usury should not be taken from him at all. Said R. Shesheth: He promised only to obey the decision of the Jewish court in case of a suit, but not to observe the law of usury.

An Israelite may lend money belonging, etc. The rabbis taught: One may lend money belonging to an alien with his knowledge, but not otherwise. How so? If an Israelite borrowed money from an alien for usury, and when he was about to return it another Israelite said to him: Give the money to me and I will pay you the usury you have to pay to the lender;—this is prohibited. If, however, he takes him to the lender, he may do so; and the same is the case if an alien has borrowed from an Israelite for usury, and when he is about to return it to him, another Israelite meets him, and asks to have the money lent to him for the same interest he has to give to the Israelite, it is allowed; if, however, the alien takes him to the lender, it is prohibited. The prohibition of the last part is correct; but why is it allowed in case the Israelite takes the money belonging to the Israelite and pays usury? Is it not a fact that in the case of an alien no messenger is to be considered? Hence, even with the knowledge of the heathen, it should be considered that one Israelite takes direct usury from another Israelite? Said R. Papa: It means, he takes him to the alien that he may hand him the money personally. Is this not self-evident? Lest one may say that as the alien does it through the Israelite it is not allowed, he teaches us that it does not matter.

The rabbis taught: An Israelite who borrowed money from an alien for usury, and afterwards added the usury money to the principal amount, and then took a note from him for the whole sum and then the lender became a proselyte: he may collect the whole amount. If, however, the note was taken after he became a proselyte, he collects the principal amount, but not the usury. The same is the case with an alien who borrowed money from an Israelite, and became a proselyte; if the note for the principal amount including the usury was given by him while he was yet an alien, the whole amount is to be collected; but if after he became a proselyte, the principal amount only is to be collected. R. Jose, however, maintains that even then the whole amount may be collected; and Rabha, in the name of R. Hisda, quoting R. Huna, said: So the Halakha prevails; and he himself declared that the reason of R. Jose's statement is that people

shall not say that he became a proselyte on account of this money only.

The rabbis taught: "For a note in which usury is mentioned the lender must not be allowed to collect even the principal amount, which he must forfeit as a fine. So is the decree of R. Meier. The sages, however, maintain that the principal amount *is* to be collected." What is the point of their differing? R. Meier holds that the permissible amount may be imposed as a fine for that of the prohibited one, and the rabbis hold that it may not.

There was a man who had pledged his vineyard to a lender, who kept it for three years, and afterwards said to the owner: If you sell it to me, good; but if not, I will hide the document of the pledge, and claim that the vineyard was *bought* by me (and as it is in my possession already three years, I will be trusted according to the law of (*Hasaka*) occupancy. The owner then assigned his vineyard in presence of witnesses to his minor son, and afterwards gave a bill of sale to the lender. This sale is certainly not valid; but the money which the lender has given for the bill of sale, is it to be considered as a loan with a note which is to be collected from an encumbered estate, or is it considered a loan without a note which is not to be collected from such estate? Said Abayi: Is this not the case of which R. Assi said above that when one admits his signature to the note, it is not necessary to have it approved by the court, and it is to be collected also from an encumbered estate? Said Rabha to him: What comparison is it? In the case of R. Assi, where the borrower admits that he owes the money with a note, another note can be written even if the original is lost; in this case, however, the bill of sale was written unwillingly, and another one cannot be written. Mrimar repeated Rabha's statement in the presence of Rabina, who cited to him then the statement of R. Johanan on the explanation of the Mishna, "that notes which were written with a previous date are of no avail"; and to the question, Why should it not be collected from the later date? R. Johanan answered: It is to be feared that he will collect from an encumbered estate at the previous date. Let him then say that the bill of sale is invalid because, if lost, it cannot be rewritten from the date of the first writing. And he answered: What comparison is it to our case? There it cannot be rewritten from the original date, but it can be rewritten with a later date; here, however, it cannot be rewritten at all for the reason said above.

MISHNA *VIII.:* One must not buy articles to deliver during the year, for a certain price before the market price is fixed. He may, however, do so afterwards—even when the seller does not possess as yet the articles bought—for the price he pleases, as, if he does not possess them, he can buy them from another. If the seller was first in the harvest, the buyer may stipulate the price with him for the sheaves, crop of grapes, vat of olives, clay balls of a potter, and lime when it was already in the kiln, and also for manure of the whole year. R. Jose, however, maintains that he must not do so with manure unless he has it ready for delivery; the sages allow it. For all mentioned above he may make the stipulation that if the price will decrease he shall deliver them for the lower price. R. Jehuda says that to this effect no stipulation is necessary, as the buyer may claim in such a case the existing price or the return of his money.

GEMARA: R. Assi said in the name of R. Johanan: The price for the whole year must not be stipulated for at the existing price of the large cities, as these prices are changeable.

The rabbis taught: "One must not buy articles to deliver during the year before the market price is fixed. If, however, the new articles were four for a salah and the old ones three, the price must not be fixed until it will be a standing price for both of them. If mixed grain from different fields sold four measures for a salah, and from a single one three, the price must not be fixed until the market price will be fixed for both." Said R. Nahaman: A price may be fixed for the mixed one, as the existing market price for such grain. Said Rabha to him: Why should this differ from grain from a private field? You may say that, if the seller does not possess the mixed grain, he can borrow from another seller of mixed grain; is it not the same with private men? And he answered: A private man would consider that it is humiliating for him to borrow from a dealer of mixed grain, or, if you wish, I may say that one who gives money to a private man intends to get from him the best in the market.

R. Shesheth, in the name of R. Huna, said: "One must not lend money with the understanding that if it is not returned at a certain time the borrower shall furnish him articles at the existing price (*i.e.*, although this is allowed to be done in the manner of buying and selling, with a loan it is not allowed, as it appears usurious). Said R. Joseph b. Hama, according to others, R. Jose b. Abba, to him: Did, indeed, R. Huna say so? Was he not questioned whether it was allowed to be done as the stu-

dents of the college did, who borrowed money in Tishri and repaid with fruit in Tebeth at the price of Tishri? And he answered: There is wheat ready for sale in the cities of Hini and Chili which is always at a low price, and they can buy and repay their debt with that. We see then that he has allowed such a loan? He was previously of the opinion that it must not be so done; afterwards, however, when he heard that R. Samuel b. Hyya said in the name of R. Elazar that this may be done, he retracted from his previous opinion and decided that it may be done.

The rabbis taught: If one travelled with stock from one place to another, and while on the road his neighbor asked him to sell it to him at the price of the place he intends to go to (I will sell it here and will use the money until a certain time)—if the seller takes the responsibility of the stock while on the road it is allowed, but otherwise it is not (because it is considered a loan, and the increase in price appears usurious). If one was about to deliver his fruit to a certain city in which the price of it was higher, and some one told him that he has the same fruit in the above-mentioned city and he will deliver it to him there in exchange for the fruit in his possession here, then, if he really possesses the same in the above-mentioned city at the time he takes the exchange, it is allowed (because the fruit of that city is considered from now under the control of him who gives the exchange for it here). But if the one who offers the exchange has it not ready for delivery as yet, it is not allowed. For the grain dealers, however, it is allowed to borrow money with the understanding to repay it with grain for a lower price than the existing one in that city, without fear that this appears usurious. Why so? R. Papa says: Because with his money he opens the door for them to buy grain at the lowest price at every place it is to be found; so he enables them to repay him with the grain at a lower price, even immediately after the loan, and therefore it is not to be considered usury for the prolongation of time for repayment. R. A'ha b. Iqa, however, says: It is favorable to them for the wholesale grain dealers to know that they sold their grain at a low price, so that the dealers will make the price of their grain still lower, so as not to lose their custom. What is the difference between these two reasons? If the grain seller was a new one who was unknown as yet to the country grain sellers, then, according to R. A'ha b. Iqa's theory, it is not allowed for him to do so. In Sura four measures of grain could be bought for one zuz; in Kahfri there were sold six for one zuz; and Rabh had given money to the grain dealers in Sura

to buy grain for him in Kahfri at the rate of five measures for a zuz, taking the responsibility of the grain while on the road. But if he was responsible for them while on the road, why didn't he take six, as was the existing price in Kahfri? With such a prominent man as Rabh it is different (he allowed them one measure for their trouble). R. Assi questioned R. Johanan: May this be done with other articles besides grain? And he answered: Rabbi was about to do so with frippery, and R. Ismael b. R. Jose restrained him from this. With regard to a vineyard (*i.e.*, to buy the products of it, when they are not as yet ripe, at a low price, by advancing money for the same), Rabh did not allow this, because the price of the ripe fruit will be higher, and it appears as if he were taking usury for his money. Samuel, however, permitted this, as the buyer takes the risk of his money in case the vineyard may not yield the products, or in case they may become spoiled. Said R. Shima b. Hyya: Rabh, however, admits that this may be done with calves* (*i.e.*, to buy the offspring of the cattle for next year), and there is a great risk of miscarriage and other accidents. Samuel said to the grain dealers who used to give money to the farmers for the products of the next year: "I order you to help the farmer in his labor on the field, in order that you may acquire title to the body of the field, as, if you will not do so, your money will be considered as a loan, which is not allowed." And Rabha also said to the watchmen of the crops (who used to receive their payment from the grain when ready for delivery): "I order you to help the farmer in his labor all the time he is laboring, until harvest, as if you were hired for this purpose; for according to the law you would have to be paid only after all the labor is done, and then, when you receive a larger quantity of the grain than your trouble was worth, it would be considered that the farmer lowered the price for you, which is allowed. (If, however, you will not follow my order, the larger quantity would be considered as arising from waiting for the money which ought to be paid to you every day for watching, and appears usurious)." The rabbis said to Rabha: "You, master, consume usury, as usually the farmers hire their fields for the quantity of four kurs for each field, with the understanding they shall harvest it in Nissan, and you wait until Eyor and take six kurs." And he answered: "Your acts are unlawful, as the field is hired to the gardener, and if you com-

* This is in accordance with the explanation of Hananal in Tospheth. Rashi, however, explains otherwise, which is not understood easily.

pel him to harvest in Nissan you are injuring him in many kurs, as the grain is not ripe as yet; but I am awaiting until Eyor and benefit him, and the two kurs more I take is for hiring the field and not for awaiting the payment of the money." There was a certain alien who pledged his house to R. Mari b. Rachel,* and afterwards he sold the same to Rabha. At the elapse of one year after the pledging took place R. Mari submitted the rent for the next year to Rabha, saying: The reason why I did not submit the rent to you for the first year is because a pledge without a fixed time is a year, and if the alien would like to repay me within the year, he could not do so without my consent; but now, when the time is over, I have to submit to you the rent for your house. And Rabha rejoined: "I did not know that the house was pledged to you, and if I were aware of it, I would not buy it; but now we have to act according to the Persian law, which dictates that the buyer has not to collect the rent until he pays the whole amount, and I will also act so. I will not take the rent from the house until the debt on the house will be paid to you by the seller.

Said Rabha of Barnish to R. Ashi: "I call the attention of you, master, that the rabbis are consuming usury, as they pay for wine in Tishri and choose it in Teveth when it is already in good condition, and this appears usurious, as, if they would take it in Tishri, they would suffer the damage if spoiled; but by advancing the money, the responsibility rests on the seller." And he answered: They advance the money for wine and not for vinegar, and the wine which becomes sour during that time was so already in the beginning of the season, but it could not be so recognized; it is, therefore, lawful for them to take the wine for which they have advanced their money. Rabina used to give money to the inhabitants by the shore of Shanwatha before the time of wine-pressing, that they should deliver him the wine thereafter, and they delivered him a barrel or two more than he bought. He came to question R. Ashi whether he could accept it or not, as it appeared usurious. And he answered: You may; as it is only a gift. Said Rabina: But I am afraid this should be considered robbery, as the estates they possess were occupied by

* Rachel was the daughter of Mar Samuel, who was captured by heathens, married a heathen who afterwards became a proselyte, and his name was Issur the Proselyte. Her pregnancy began while he was yet a heathen, and therefore R. Mari was named after his mother, *Rashi*. (There was another Mari b. Rachel mentioned in Sabbath, p. 111, and his father Rabba. See there).

them after the owners of them escaped for not paying taxes, and the possessors paid the taxes to the Government (and as it is a law that estates cannot be considered robbed, they still belong to the previous owners; consequently the products are robbery). And R. Ashi rejoined: The estate is pledged for the taxes, and the Government says that the estate on which taxes were not paid is to be pledged to him who pays; consequently their occupation is lawful.

R. Papa said to Rabha: I call the attention of you, master, to the rabbis, who pay head-tax charge for those who cannot pay them, and they are laboring with them more than ought to be. And he rejoined: If I were to die a day previous you would not be aware of what R. Theshsth said, namely: The surety for these people lies in the archives of the king, and the king has ordained that he who pays no *charge* shall be made the servant of him who pays (for him).

R. Seuram, the brother of Rabha, used to compel doubtful characters to carry the palangin of Rabha, and Rabha approved his act from the following Boraitha: "Whence do we deduce that one, whose habit is not in accordance with the law, may be made to labor?" From the verse [Lev. xxv. 46]: "You may hold them to service forever, and* over your brethren, the children of Israel." Lest one say, however, that the same may be done with one who is acting rightly, therefore it is written: "But over your brethren . . . ye shall not rule with rigor."

R. Hama said: If one gave money to his comrade to buy wine for him, and he neglected to do it, the latter must deliver to him wine at the price current at the dock of Zulschafat (a place where the wholesale wine dealers brought their stock for sale). Said Amimar: I repeated this Halakha to R. Zbid of Nahardea, and he said: R. Hama's decision holds good only when he ordered him to buy any wine for him; but when the order was to buy a certain kind of wine, the messenger has no responsibility, as who can be sure that the wine ordered could be gotten easily? R. Ashi, however, maintains that even if the order was for any wine, he is not to be made responsible, as it is only an *asmachta* . . . which gives no title. But why should this case be different from the Mishna in Chapter IX. of this tract, that if one hired a field for sowing purposes, and did nothing, he must pay according to

* The Scripture reads *ubachiecham;* literally, "and with your brothers." Leeser translates according to the sense, "but." The Talmud takes it literally, and makes this word correspond both to the former and the latter sense, as explained in the text.

the appraisement of the products it would yield when cultivated? Then it was in his power to cultivate the field, and therefore he is responsible; but here it may be that he could not find the wine required.

Rabha said: If one of a company of three partners has given money to a messenger to buy something, it is to be considered for the company, and not for himself. However, this is only in case their money is kept in one sum; but if the money of each partner is tied and sealed separately, the things bought are only for him who gave the money.

R. Papi, in the name of Rabha, said: "The mark which is usually placed on each barrel of wine when sold gives title to the buyer" (even without any drawing). To what purpose was this decision made? According to R. Habiba, to give title so that the seller should have no right to retract; and according to the rabbis, if the seller has retracted, the sale is invalid, but he has to accept the curse of "who has punished the generation of the flood," etc., mentioned in the above Mishna. And so the Halakha prevails in places where it is customary to make such a mark a final act of the sale.

If the seller was first in the harvest, etc. Said Rabh: If the grain was to be finished with two kinds of labor only, he may fix the price; but if he requires three kinds, he must not. Samuel, however, maintains that if the finishing depends upon the efforts of a human being, even if there were a hundred kinds of labor for finishing, he may; but if he depends upon Heaven (as, *e.g.*, rain or sunshine), even if there is only one kind of finishing, he may not. But did not the Mishna state that one may fix the price on sheaves, although he must dry, thresh, and winnow them (hence there are three kinds of labor before it is finished)? It may treat of when the sheaves were already spread in the sun for drying. But according to Samuel, that the price must not be fixed even if one depends upon Heaven, and there is the winnowing which cannot be done without an extraordinary wind. This also can be done with sieves.

Clay balls of a potter, etc. The rabbis taught: "The price must not be fixed on the clay balls of a potter unless they are made." So is the decree of R. Meier. Said R. Jose: "This is in the case of white earth, which is not so frequently in the market; but of black earth, as from the village of Hanania or Shihin and neighborhood, he may do so even before they are made, as, if he does not possess the material, he may find it in the market. Amimar

used to give the money when the earth was brought to the pottery. According to whom did he act? If according to R. Meier, it must not be done until ready; if according to R. Jose, it may be done even before the earth was brought? His act was in accordance with R. Jose's decision. But in the place of Amimar the earth was dear, and not so frequently found; when the earth was brought he relied upon the sellers and gave the money; otherwise, he did not.

And also manure of the whole year, etc. Is not the statement of the sages the same as that of the first Tana? Said Rabha: They may differ concerning the rain-season, in which is allowed to be done, in accordance with the decision of the first Tana; and according to the sages, it may be done only in the sun-season, but not in the rain-season.

For all mentioned above, etc. There was a man who paid a stipulated amount for an outfit to be delivered at the house of his daughter's father-in-law; in the meantime the value of the equipment was reduced (and the father-in-law refused to receive it for the value stipulated), and when the case came before R. Papa he decided that if the price was stipulated at the rate existing when the goods were to be delivered, then he must give for it the existing price, and if this stipulation was not made, he has to accept it at the previous price. Said the rabbis to R. Papa: And even then why should he pay him the higher price? The money paid does not give title? And he answered: My decision also was only concerning the curse mentioned in the Mishna. If it was stipulated, and the seller retracted, *he* has to accept the above curse; and if it was not stipulated, and the buyer retracts, then the above curse applies to the latter.

MISHNA *IX.:* One may lend his gardeners wheat to return him in the harvest-time the same measure, for the purpose of sowing, but not for consuming. (This was stated because) Raban Gamaliel used to do so with his gardeners, but if afterwards the price changed to a higher or a lower one, he always took the lower price to benefit the gardener, not because so was the Halakha, but because he wanted to act rigorously for himself.

GEMARA: The rabbis taught: "One may borrow his gardener's wheat, etc., for sowing, if he has not started work, but not if he has." Why did not the Tana of our Mishna make a difference, when the Tana of the Boraitha did? Said Rabha: R. Aidi explained to me thus: The Tana of the Mishna speaks of a place where the gardener usually sows the field with his own wheat, and there is no

difference whether he started to work or not. As long as he did not furnish the seed the owner may eject him; consequently, if he lends him his wheat, it is not considered a loan, but as a stipulation that he shall work for the owner of the field, and the owner shall receive from the share of the gardener that measure of grain which was advanced to him (and therefore, no matter if afterwards the price was raised, it is not usury). And the Tana of the Boraitha speaks of a place where usually the owner of the estate furnished the seed, and he (the owner) has changed the custom of his place; because his field was in good condition he made the gardener furnish the seed. Then, if the gardener has not started his work as yet, so that the owner may eject him, the above stipulation may be made, as it is considered a business matter, not a loan; but if his work is already begun, for which reason he cannot be ejected by the owner, and then the gardener is compelled to borrow the seed from the owner, it is considered a loan; and if the grain becomes higher, if he returns him the same measure it appears usurious.

The rabbis taught: "One may be asked by his neighbor for a loan of grain, to return the same at a certain time if the price will not be lower; but if it will, then he shall be paid in money at the price now existing. If, however, such stipulation was not made, if it became lower, he may return him with grain; if higher, he has to pay him in money at the price existing at the time borrowed, according to the explanation of R. Shesheth.

MISHNA *X.*: One must not lend a kur of wheat that it shall be returned to him from the barn (for fear it may become dearer). He may, however, lend him until his son came with the key. Hillel, however, forbids even this, as he used to say: A woman must not lend a loaf of bread to her neighbor, unless a price is stipulated for it, for fear wheat may become dearer, and then the return of the loaf will appear usurious.

GEMARA: Said R. Huna: "The statement of the Mishna that one may borrow wheat until he found the key: it is allowed only to borrow as much as he possesses; if he possesses a saah, he may borrow one; if two, two." R. Itzhak, however, said that even if he possesses only one saah, he may borrow many kurs (as the title of this saah is not secured to the lender and he may use it for himself; consequently the borrowed grain is to be returned from that of the market, and this saah he possesses remains free; on which he may borrow many saahs). Taught R. Hyya to support R. Itzhak: ("One must not borrow wine or oil if he does not pos-

sess) a drop of wine, a drop of oil." From which it is to be inferred that if he possesses one drop he may borrow upon it many drops.

Hillel forbids, etc. Said R. Nahaman in the name of Samuel: The Halakha prevails in accordance with Hillel. (The Gemara, however, says:) The Halakha does not prevail in accordance with R. Nahaman's statement.

As he used to say, etc. Said R. Jehuda in the name of Samuel: Hillel stands alone with his statement, as the majority of the sages hold that it may be borrowed and repaid anonymously (without any stipulation). The same said again in the name of the said authority: Society men transgress who are not very particular with each other regarding the size, weight, and number of things borrowed and returned (if they borrow from one another, and do not care to make return in kind and in the same manner, they transgress the commandment, "Thou shalt not cheat thy brother in measure, etc.," as they accept more or less than was borrowed). And also as regards violence, Sabbaths, and festivals, if they lend to each other on these days, according to Hillel, they are also accused of usury. The same said again in the name of the said authority: Scholars who know the law of usury may lend each other for interest (as they know the law, they give the interest by means of a present). Samuel said to Abuhu b. Ihi: Lend me a hundred peppus; I will return you a hundred and twenty, and it will be right (not as usury, but as a present). R. Jehuda, in the name of Rabh, said: One may lend to his sons or family for usury, to give them an idea how hard it is to pay usury and to understand the great punishment of it. (Said the Gemara:) This, however, must not be practised, as they may get accustomed to it, and afterwards lend money for usury.

MISHNA *XI.:* One may say to his neighbor: Help me in weeding or in digging around my vineyard to-day, and in return I will help you on some other day; but he must not say: "Help me in weeding and I will help you in digging, or *vice versa.* All the days of the rainy season are considered alike, and the same is the case with the days of the sunny season; but one must not say: "Help me in the sunny season and I will help you in the rainy season," or *vice versa.*

Raban Gamaliel says: There is a kind of usury which may be named preceding usury, and also another kind which may be named succeeding usury. How so? If one is to borrow money from another, and he sends him a present previously for this

purpose, it is a preceding usury; if one has kept the money of his neighbor for a certain time, and on repaying he sends a present, saying: "This is for the favor you did in leaving the money in my hand for such a time"—this is succeeding usury. R. Simeon says: There is also usury of talk. One must not say: I inform you that such and such a man, whom you are anxious to see, has arrived (and for this information you shall favor me with a loan). The following transgress the negative commandment of usury: The lender, the borrower, the surety, and the witnesses. The sages add also the scribe. They transgress the following commandment [Lev. xxv. 37; also *ibid.* 36, and Ex. xxii. 24, and in the verse: "Ye shall not lay upon him usury;" and finally, Lev. xix. 114]: "Ye shall not put a stumbling block before the blind, but thou shalt be afraid of thy God. I am the Lord."

GEMARA: There is a Boraitha: R. Simeon b. Joa'ling said: Whence do we deduce that, if one owes his neighbor a hundred zuz, and it was not customary for him before the loan to greet him first, he must not do so after the loan took place? From [Deut. xxiii. 20]: "Interest of anything, etc.," *i.e.*, that even a word must not be given as interest.

And the following transgress, etc. Said Abayi: "The lender transgresses all the commandments mentioned; the borrower transgresses the commandments of Deuteronomy mentioned above and of Leviticus, xix. 14. The witnesses, however, transgress the commandment of Exodus, xxii. 24."

We have learned in another Boraitha: "The usurers lose more than they profit (as said above, finally they lose all they possess); furthermore, they make Moses our master a fool, and his law untrue, saying: If he knew that usury brought great profit, he would not have written that it is prohibited."

When R. Dimi came from Palestine, he said: Whence do we deduce that if one is aware that his debtor has nothing with which to pay, he must not pass him by? From the verse [Ex. xxii. 24] cited above. R. Ami and R. Assi both said: One who does so is as if he caused his debtor to suffer from fire and water; as it is written [Psalm lxvi. 12]: "Thou hast caused men to ride on our head; we entered into fire and into water." R. Jehuda said, in the name of Rabh: Who lends money to any one without witnesses transgresses the commandment: "Ye shall not put a stumbling block before the blind." Reish Lakish adds that he who does so draws a curse upon himself, as it is written [*Ibid.* xxxi.

19]: "Let the lying lips be made dumb which speak hard things against the righteous." (Rashi explains this as meaning that in case the debtor denies the entire claim of his creditor, people usually believe the debtor and curse the creditor.)

The rabbis said to R. Ashi: Rabina adheres strictly to all that the rabbis ordained. (And to try whether it is so,) R. Ashi sent to him on one eve of Sabbath: Let the master send me ten zuz, as I have a chance to get a bargain. And he answered: Let the master appoint witnesses or write a note. And R. Ashi sent to him: Do you demand this also from *me?* And he answered: In much the more from you, master, who are always engaged in your study. It can easily escape your mind, and I would draw a curse on myself.

The rabbis taught: "The following three cry for help without being heard: Who lends money without witnesses, who buys a lord to himself, and he over whom his wife rules." What is meant by "who buys a lord to himself"? Who assigns his possessions to his children while he is still alive. Other number among the cries for help which are not heard, that of him who suffers in one city and does not try to find his livelihood in another.

CHAPTER VI.

REGULATIONS CONCERNING HIRING LABORERS, CATTLE, OR TRANSFERRING GOODS, THE RESPONSIBILITIES OF THE DRIVERS, ETC.

MISHNA *I.:* He who hired servants (for the daytime), and they deceived one another, there is nothing but resentment. (The explanation is given farther on.) If one hired a driver or a carrier to bring trumpets, flutes for a wedding or funeral, or day laborers to take out flax from its steeping, or to do things which, if not done on the day of hiring, would cause damage, and they retracted: if there were no others to be hired for the same price, the employer may increase the amount of their hire, or deceive them (*i.e.*, promise an increase, but pay only according to the first agreement). If one hired servants, and they retracted, they have to suffer; if, however, the employer retracted, he has to suffer. (This is the rule:) Whoever changes or retracts his words, has to suffer for the injury caused.

GEMARA: The Mishna does not state that the servants have retracted, but that they have deceived one another, which is to be understood, the servants have deceived one another. How was the case? The employer appointed one of his servants to hire laborers for him, and he deceived them. (Let us see.) How was it? If the employer told him to hire men for four zuz a day, and he hired them for three, they have agreed for the price, and what has resentment to do here? On the other hand, if the employer told him to hire men for three zuz, and he promised four, then, if he told them that they would receive their payment from himself, let him pay the difference from his own pocket, as we have learned in the following Boraitha: "If one hires a laborer to do his work, and thereafter instructed him to do the work of another, he must pay him the full payment, and the reward for his labor he may demand from the employer?" The case was, he said to the laborer that the employer will pay, *i.e.*, he has not fixed any price. But let them see how the price for a day for laborers stands? The case was that there were some employers who paid three, and some who paid four, and the laborers may claim: "If

we did not understand from your words that we were to get four, we would take the trouble to look for other employers who pay four." And if you wish, it may be said that the Mishna treats of servants who possess their own fields (and they do not hire themselves unless for a higher price than the ordinary), and they may claim: "If we did not understand that we were to get four, it would be a humiliation for us to hire ourselves for a lower price." It can also be explained that the Mishna treats of laborers who are doing work only for others, and nevertheless they may claim: "Because we understood that we were to get four zuz, we troubled ourselves to make a good job." But, then, their work should be examined? The case was, they were engaged in digging a trench which was filled with water, and could not be examined. And if you wish, it may be said that the employer told the servant to hire laborers for four zuz a day, and he hired them for three; and although they agreed to work for the price, they may be angry with the hirer, saying: "Do you not hold to the verse [Proverbs, iii. 27]: 'Withhold not a benefit . . . when it is in the power of thy hand to do it'?" After all, it may be said that the Tana of our Mishna by the expression "deceived" means also "retracted" (and he treats of a direct agreement between the employer and the servants), as we have learned in the following Boraitha: "If one has hired laborers, and they have deceived the employer, or *vice versa*, they have nothing but resentment, provided they did not go to work at all. But if the drivers went for grain and did not find any, or field laborers went to work and found that the field was as yet wet, they get the full payment. However, the hire of a driver who loads his wagon and delivers it to the proper place is not to be the same as the hire of one who did not find any load; and the same is the case with laborers who are engaged in work all day compared with those who are idle the whole day. All this, however, relates to when they had not yet begun the labor; but if they began, their labor must be valued for what they have done. How so? If they agreed to cut stalks or to weave a garment for the price of two salas, and they left their work, having done the half of it, the work done must be appraised; if, *e.g.*, their work was worth six dinars, they may be given one sala (which is eight dinars), or they may be let finish their work, and take two salas. And if it was worth only one sala, they get a sala. R. Dossa, however, says the *remaining* work must be appraised, and they get the difference; *e.g.*, if the *remaining* work can be done for less than six, they get only one-half a sala (although they have

done the half of the work), or they may be let finish their work, and take two; but if the remaining work could be done for a sala, the laborer who has done the half gets a full sala. However, all this is said of such things as do not become spoiled if the work is done later; but in cases in which the work may become spoiled, he may hire other laborers on their account, or he may deceive them. How so? He may say to them: "I made the agreement with you to work for one sala; now, however, I raise it to the amount of two." To what amount *may* he increase the hire? To the amount of forty to fifty zuz, provided there are no other laborers to hire for a lower price; but if there are, and the retracting laborers tell him to get his work done by them, he has nothing but resentment.

A disciple taught before Rabh that the full amount must be paid, but Rabh said: My uncle (R. Hyga) said: "If I were the hirer, I would pay only for the loss of time," and thou sayest that he must pay the full amount. The Gemara questioned: Does the above Boraitha not add: The hire of a driver who loads his wagon, etc., is not to be the same as the hire of one who did not find any load? (Why, then, did not Rabh refer him to this Boraitha, and not to his uncle?) Rabh was not aware of the above addition. According to others, he was aware of it; and concerning this Boraitha he says: My uncle said: "If I were the hirer, I would pay nothing," and thou sayest that loss of time must be paid. But, if so, there is a difficulty. It might be said that R. Hyga speaks of laborers that he appointed yesterday to come to work early in the morning, and rain made the field wet at night, so that it was unfit for work; and in such a case the laborers ought to know it, and not come to work at all. The Boraitha treats of a case where both the employer and the laborers were not aware of the fact that the field was unfit for work at that time. And so also declared Rabh elsewhere: If one hired laborers to dig a trench, to begin their labor on the morrow, and at night rain filled the trench with water, then, if at the time he hired them he notified them of the place where the trench was to be found, the laborers have to suffer the loss (seeing the rain, they ought not to come to work); but if at the time he hired them he did not notify them of the place where the trench was to be found, he must pay for the loss of time (as they may say: How were we to know that the trench was placed where it was raining?). The same said again: If one hired laborers to wet his fields, and in the meantime rain came, the laborers suffer the damage. If, however, they become

wet by the overflow of a river, the employer must pay them for the loss of time. He said again: If one hired laborers to wet his fields, and in the middle of the day the river from which the water was to be taken ceased to flow, if this was an accident the laborers have to suffer. If, however, this happens with the river frequently, the employer must suffer; provided the laborers were strangers and did not know the nature of this river. He also said: If the work for which the laborers were hired for a day was finished at the middle of the day, he may engage them with other similar or easier work, but not with harder. And if he has not such, he nevertheless must pay them the full amount. Why so? Let him pay them for the loss of time only? Rabha speaks of carriers of Mahuza (his city), who used to become weak when they had nothing to do (in the daytime).

The master said: The labor already done must be appraised, and if it was worth six dinars, they get a sala (eight dinars). Hence the rabbis hold that the laborers always have the preference.

"Or let them finish their work, and take two salas." Is this not self-evident? The case was that the labor became dearer, and the laborers and the employer became reconciled. Lest one claim that the laborers may say: "We accepted your reconciliation with the intention that you will raise our wages" (and as, according to the rabbis, the laborers always have the preference, their claim should be taken into consideration), he comes to teach us that the employer may say: "My intention in becoming reconciled was to give you a good meal."

"If the labor were worth one sala, they get it." Is this not self-evident? The case was, that at the time he hired them the labor was cheaper. He, however, promised to raise one zuz. Thereafter the labor became a zuz higher: lest one say that the laborers may claim that they were promised a zuz over the existing price, consequently they have to get two zuz more, he comes to teach us that the employer may say: "I was aware that the labor is worth a sala, and it will be increased to this extent sometime. I therefore promised to pay you the proper price, but not to add a zuz above the proper price."*

"R. Dossa said," etc. As he holds, the employer has the preference. But to what purpose does he add: "Or let them finish the work and take two salas"? Is this not self-evident?

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* Rashi explains this passage in another manner, which is somewhat complicated. Our translation seems to us to be the right one.

He treats of a case where the labor became cheaper and the employer locked them out, and afterwards the laborers became reconciled to him: lest one say that the employer may claim that he accepted the reconciliation with the intention to lower the price, he comes to teach us that the laborers may say they have become reconciled to him with the intention of making a good job. But to what purpose does he continue, that if a sala, etc.? Is this not self-evident? Said R. Huna b. R. Nathan: He speaks of a case where the laborers have lowered the price a zuz, and thereafter the labor became a zuz cheaper: lest one say that the employer may claim: "My agreement was to give a zuz less than the current price, consequently I have now to pay two zuz less," he comes to teach us that the laborers may claim: "We were aware that the labor may become cheaper, and were willing to work for the proper price, but not lower than that."

Said Rabh: The Halakha prevails in accordance with R. Dossa. Did, indeed, Rabh say so? Has he not said that a day laborer may retract even in the middle of the day? And lest one say that R. Dossa makes a difference between a day laborer and a piece-worker, the following Boraitha shows that he makes no difference, namely: "If one hired a laborer, and in the middle of the day the latter heard that one of his relatives died, or he became ill from sunstroke, whether he was a day laborer or a piece-worker he gets the full payment." Now, according to whom is it? Shall we assume it is according to the rabbis? Why, then, need it to be said that it was accident? Even without this the rabbis hold that the laborer always has the preference. It must therefore be in accordance with R. Dossa; hence he makes no difference between the above two kinds of laborers?

Said R. Nahaman b. Itzhak: The Boraitha treats of a case where the work would be lost if not finished in the same day, and therefore only in case of an accident does he get the full payment in accordance with all of them; but in other cases there is a difference between the two kinds of laborers mentioned above (according to R. Dossa). And if you wish, it may be said that the statement of our Mishna, that "he who retracts his word must suffer the damage," is to be interpreted as we have learned in the following Boraitha: "Whoever retracts." How so? If one sold a field for a thousand zuz, and the buyer gave him a deposit of two hundred, if the seller retracts, the buyer has the preference; he may insist upon the return of his money, or he shall furnish him with the best estate for the value of his deposited money. If,

however, the buyer retracts, the seller has the preference; he may return him the money, or give him the worst estate he has for the value of his money. R. Simeon b. Gamaliel, however, says (that in case one buys an estate by instalment), an agreement must be written to prevent any retraction. How so? The seller writes: "I, so-and-so, sold such-and-such a field to so-and-so for one thousand zuz, of which two hundred were paid, and the balance of eight hundred is to be paid afterwards," then the agreement is in full force even for many years.

The master said: "Or best estates for his money." At the first sight it is to be understood the best estate the seller possesses. Why so? Let him be considered a creditor, of whom a Mishna states that he has to collect from the middle one; and, secondly, he has given the money for a certain estate which is still in existence? Said R. Nahaman b. Itzhak: The Boraitha means to say, in both cases, from the best and the worst of the field in question. R. Aha Aiga, however, says: There is no contradiction even when it means from the best estate he possesses, as usually a poor man who buys an estate for a thousand zuz has to sell out his personal property or small estates for a cheap price, so that if the seller retracts the buyer suffers damage, and there is a Mishna that all damages must be appraised from the best estate.

R. Simeon b. Gamaliel said: "The seller writes," etc. We see, then, that the buyer acquired title only because of the agreement, and not otherwise; but did not a Boraitha state: "If one gave a deposit to his neighbor, and said: Should I retract, my deposit shall be relinquished to you, and the seller said: Should I retract, I shall return you the deposit in double, the stipulations are of avail; so is the decree of R. Jose." [R. Jose is in accordance with his theory that an *asmakhta* gives title.] R. Jehuda, however, said: It is sufficient that the buyer should acquire title to the amount of his deposit. Said R. Simeon b. Gamaliel: All this is only in case the buyer said: My deposit shall give me title. If, however, there was sold to him a field for a thousand zuz, and in payment thereon he gives him five hundred zuz, title is given to the buyer to the whole field, and he has to give him the remainder even during many years (hence we see that according to him title is acquired even if it was not so written as stated above). This presents no difficulty. The Boraitha speaks of when the seller agrees to wait for the remainder, and the Mishna speaks of when the seller was in need of money, and insisted upon immediate payment (which shows that he sold him the article only because he

was in need of money, and would not like to give him title until the whole amount was paid; as Rabha said elsewhere: If one has sold an article, when he was in need of money, and received a deposit from the buyer, title is not acquired unless the whole amount is paid; but when the seller was not in need of money, and did not insist upon immediate payment of the remainder, title is acquired).

Rabha said again: "If one lends a hundred zuz to his neighbor, and he returns the sum in instalments by single zuzes, although it was not so stipulated, the payment is valid, and the lender has nothing but resentment, as he may say that the borrower had harmed him, for he could have done business with the money if it were paid to him in one payment.

There was a man who sold an ass while he was in need of money, and the buyer paid him the whole amount less one zuz. R. Ashi was deliberating if in such a case title is acquired or not. Said R. Mordechai to him: So said Abimi of Hagrunia in the name of Rabha, that one zuz is considered the same as many, and title is not acquired. Said R. A'ha b. R. Joseph to R. Ashi: But we have heard in the name of Rabha that title is acquired; and he answered: The Halakha you have heard in the name of Rabha must be interpreted, in case it was certain that he has sold his field on account of its infertility, and the insisting upon the payment of the remainder was only because he was afraid he shall retract.

It is certain that if one was in need of a hundred zuz, and could not find any one to buy an estate for this amount, and sold out for two hundred (and received a deposit of one hundred zuz), and insisted upon the immediate payment of the remainder, then title is not acquired. But how is it when, if the same would trouble himself to find a buyer for one hundred zuz, he could get one, but he did not, and sold out for two hundred zuz, and was insisting upon the immediate payment of the remainder? Shall we assume that this case should be considered as the case of selling a field on account of infertility, stated above; or is it not because, after all, he sold out this field unwillingly, owing to the need of money? This question remained undecided.

If one hired a driver . . . or he may deceive them. But to what amount may he hire others on their account? Said R. Na'hman: To that amount which the employer owes them for the labor done already. Rabha objected to this statement from

the Boraitha stated above (p. 190), that he may hire on their account to the sum of from forty to fifty zuz ; and R. Na'hman answered : The above Boraitha speaks of a case where the laborers place their instruments to such an amount in the house of the employer.

MISHNA *II.:* If one hired an ass for use on a mountain, and he used it in a valley, or *vice versa*, although the distance for which it was hired was equal in both ways (as, *e.g.*, ten miles), and the ass dies, the hirer is responsible. If he hired it to use it on the mountain, and he used it in a valley instead, and the ass slipped, he is free (because this could surely occur on the mountain, upon which such a case is more frequent) ; if, however, it was overheated, he is responsible. The reverse is the case when he used it on the mountain instead of in the valley : if it slipped, he is responsible ; and if it is overheated, he is free. If, however, it was overheated because of the ascending to the top of the mountain, he is responsible. If one hired an ass and it became blind, or it was taken for an *angaria* (*i.e.*, taken by the Government for labor), the owner may say : " Yours (which you have hired) is before you." If, however, it dies, or broke a foot, he must furnish him with another ass.

GEMARA : Why does the Mishna make a difference in the second part between slipping and overheating, and does not do so in the first part ? In the school of R. Yanai was said : Because in the first part the plaintiff may claim the animal dies owing to the air of the mountain ; (if it was hired for a valley,) he may say that it was not used to the air of a mountain, and if for a mountain, he may claim it was not used to the air of a valley. R. Jose b. Hanina, however, said : The Mishna treats of when it dies owing to overwork, and Rabba says : The Mishna treats of when it dies from the bite of a snake (so the plaintiff may claim : If you had used it for the place hired, such would not have occurred). R. Hyya b. Abba, in the name of R. Johanan, said : The Mishna is in accordance with R. Meier, who holds that one who has done contrary to the agreement with the owner is considered a robber, and is responsible. Where is to be found such a statement by R. Meier ? In the following Boraitha : " If one has given a dinar to a poor man for the purpose of buying himself a shirt, he must not buy a garment, and if for the purpose of a garment, he must not buy a shirt, because this would be contrary to the intention of the donor."

But perhaps there is another reason ; namely, people shall not say: " So-and-so has promised to furnish a garment for the poor so-and-so," and did not keep his promise ? Then R. Meier should state : Because of suspicion. Why, then, his reason, " because it is contrary to the intention," etc.? Hence he holds that every change of the intention of the owner is considered robbery. Infer from this that so it is.

Or it was taken, etc. Said Rabh : The case is only when it is an angaria which is to be afterwards returned ; but if it is an angaria which is not to be returned, he must furnish him with another ass. Samuel, however, maintains : There is no difference what kind of an angaria it was ; if it was taken for using to the same place where the hirer intends to go, the owner may say to him : " Yours is before you." If, however, it was taken in a contrary direction, then the owner must furnish him with another ass. An objection was raised from the following : If one hired an ass, and it became blind or mad, the owner may say : " Yours which you have hired is before you." If, however, it dies, or it was subject to an angaria, he must furnish him with another ass. This would be correct in accordance with Rabh's theory, as the Boraitha may treat of an angaria which is not to be returned ; but Samuel's statement it contradicts. And lest one say that the Boraitha speaks of when it was taken away in a contrary direction, so that it could agree with Samuel's statement also, it cannot hold good, because of the latter part of the same Boraitha, which states : R. Simeon b. Elazar said that if it was taken away for use in the same direction, the owner may say : " Yours is before you " ; and if in a contrary direction, he must furnish him with another ass. Now, from the statement of the latter it is to be inferred that it makes no difference to the first Tana in what direction it was taken ? Samuel may say : Is there not a Tana who is in accordance with my theory ? I hold with R. Simeon b. Elazar, and if you wish, it may be said that the whole Boraitha is in accordance with R. Simeon b. Elazar, but it is not complete, and should read thus : If one hires an ass, which becomes blind or mad, the owner may say : " Yours which you hired is before you." If, however, it dies or becomes subject to an angaria, he must furnish him with another ass. This, however, was said if it was taken away in another direction ; but if it was taken away in the same direction he intended to go, the owner may say : " Yours is before you " (you may accompany this one until the officers of the

Government will meet another ass, and yours will be returned to you). So is the decree of R. Simeon b. Elazar, as he used to say that only if it was taken in another direction must he furnish him with another ass, and not otherwise. But how can you interpret the Boraitha in accordance with him? Have we not heard him stating that if one has hired an ass for the purpose of riding upon it, and it becomes blind or mad, the owner must furnish him with another one, which contradicts the statement of the Boraitha in question? Said Rabba b. R. Huna: For the purpose of riding, it is different (as he cannot ride upon a blind or mad animal, but as for carrying burdens, he can do so even with the same). Said R. Papa: If he had hired the ass for the purpose of carrying glassware, the case is the same as if he hired it for riding.

Rabba b. Huna, in the name of Rabh, said: "If one has hired an ass for the purpose of riding, and it dies while in the middle of the way, he has to pay the half of the agreed price, and he has nothing but resentment." Let us see. How was the case? If the carcass of this ass would pay for delivering the burden to the place to which it was hired, what had resentment to do here? Let him sell the carcass, and deliver the goods, and if this is not the case, why should not the owner deliver the goods to the place? The case was such that one could not be found, to be hired for delivery; and the owner may claim payment from the place from which it was taken, to the place directed. But let us see. How was the agreement? If it was for any ass to carry the goods, then certainly he must furnish him with another one, and if for this ass, then let him sell the carcass for the purpose of carrying his goods. This was when the sale of the carcass would not yield the amount needed. But even if the carcass would pay, may he do so? (Did, then, the owner *sell* him this ass? The decision of the Mishna is that he shall furnish him with another ass; consequently he has not given him any title for this one?) Rabh is in accordance with his theory who said elsewhere that the principal amount must not be totally consumed, as it was taught: "If one has hired an ass, and it dies while in the middle of the way," Rabh said, that if the carcass would pay to buy another one instead, he may do so; but if it would pay only to hire another one, he must not. Samuel, however, maintains he may, and the point of their differing is the total consumption of the principal amount of the thing hired. According to Rabh, it must not be consumed

(and the statement of the Mishna, that he must furnish him with another ass, is in case it dies while yet under the control of the owner, so that if he sells the carcass he adds to this amount and buys another ass, and so the principal amount is not wholly consumed as in case of selling the carcass for the purpose of hiring another one) ; and according to Samuel, even the total consuming of the principal amount is allowed.

The rabbis taught : " If one hires a boat, and it sinks in the middle of the way, R. Nathan said : If he has paid, the money remains with the same owner ; but if he has not paid, he has nothing to pay." Let us see. How is the case ? If the agreement was " for this boat in which I shall carry wine to a certain place," why, then, should he not collect what he paid for ? He should claim for another boat for delivering wine, and if it was for any boat, for delivering *this* wine, why should he not pay, even if he has not done so until now ? Let the owner claim for the wine he has agreed to deliver, and he will furnish another boat ; and if the wine is lost, and the hirer cannot keep his agreement, let him pay. Said R. Papa : R. Nathan's decision can be explained only in case the agreement was " for this boat and this wine," but if the agreement was " for *any* boat and *any* wine," the loss must be divided.

The rabbis taught : " If one hires a boat for a certain place, and has unloaded it while in the middle of the way, he has to pay for the half way, and the owner has nothing but resentment." How is the case ? If the owner has the opportunity to let it, why then resentment ? And if not, why should he not get pay for the whole way ? The case was, the owner had an opportunity to let it. He claims, however, that the loading and unloading, which must be done twice, damages the boat. But if so, the claim is a just one, and he has to be paid. Read in the Boraitha thus : In the middle of the way he loads more, and the agreement was that he may load as much as he likes, and shall be paid according to the weight of the load ; and if he adds more in the middle of the way, he has to pay him for this loading for the half way only. But, then, what is the resentment for ? For the losing of time.

The rabbis taught : " If one hires an ass for the purpose of riding, the hirer may place on it his garment, his bottles with beverages, and food for himself for that day. More than this, however, the driver may prevent. The driver may also place hay and barley and food for himself for this day only.

More than this, the hirer may prevent." How is it? If on the way, food can be bought, why should not the driver prevent the hirer from placing more food than for one day? And if it could not be bought, why should the driver be prevented from taking food for more than one day? Said R. Papa: The case was, that food could be obtained at the inn only, and for a driver it is customary to trouble himself, in the city, to find out who is selling food for the ass and himself, which is not the case with the hirer.

The rabbis taught: "If one hires an ass for the riding of a male, the same must not be used for a female; if for a female, a male may ride on it. There is, however, no difference whether the female was tall or short, pregnant or nursing." If you say that a woman nursing a child, which are two bodies, may, is it not self-evident that a pregnant woman, which is only one body, may? Said R. Papa: It means even when she was both pregnant and nursing.

MISHNA *III.:* If one hires a cow for the purpose of ploughing on the mountain, with all the implements belonging to it, and he plough in a valley, if the plough-handle breaks he is free; if *vice versa,* and it breaks, he is responsible. If to thresh pulse, and he threshes grain, he is free; but if to thresh grain, and he threshes pulse, he is responsible, because pulse becomes slippery (and thus the plough-handles can easily break).

GEMARA: But how is it if the plough-handle breaks without any change of the agreement: who has to pay for it? Said R. Papa: He who holds the handle of the plough (because it breaks owing to his carelessness); and R. Shesha b. R. Idi says: He who manages the handle in such a manner that the plough digs deeper in the ground than it ought to, and so the Halakha prevails. In a place, however, which was known to them as strong ground, etc., both the holder of the plough-handle and the manager are responsible.

R. Johanan said: If one sells a cow to his neighbor, saying: "This cow is a gorer, a biter, a kicker, lying down while laboring," and in reality it was afflicted with only one of these defects, the sale is invalid (as the buyer, on examining it, may not find one or two of the defects he was told of, and thinks the seller is only jesting, and the cow has no defects at all). If, however, he says: It is afflicted with one of the defects mentioned above, and it has also some other defects, although it was afflicted with only this one, the sale is valid (because it was the buyer's duty

to search for such defects as were mentioned to him). So, also, we have learned in the following Boraitha: "If one sells a female slave, telling the buyer that she is an idiot, epileptic, and becomes confounded, and she was afflicted with only one of these, the sale is invalid (for the reason stated above). If, however, he says she is afflicted with one of the defects mentioned above, and she has also other defects, the sale is valid." R. A'ha b. Rabha questioned R. Ashi: How is it, if she has indeed all those defects (and the buyer claims that because the seller mentioned all the defects separately, he thought he was jesting, but if he had been aware that she was afflicted, he would not have bought her)? Said R. Mordechai to R. Ashi: So was it said in the name of Rabha, that in such a case the sale is valid.

MISHNA *IV.:* If one hired an ass for carrying wheat, and he used it for barley (of the same weight as the wheat he had spoken of, and the ass becomes injured), he is responsible. For grain, and he used it for straw, he is responsible, because an increase of volume makes the load harder for the animal. If for half a kur of wheat, and he used it for half a kur of barley, there is no responsibility. If, however, he has increased the size (although it was equal in weight to the half kur of wheat), he is responsible. How much must the load be increased to make him responsible? Symmachos, in the name of R. Meier, said: One saah for a camel, and three kabs for an ass.

GEMARA: It was taught: Abayi said: We read in the Mishna: "The volume of the load is *like* the weight (*i.e.*, loads of the same volume are considered of the same weight as regards the stress on the animal, and if he added these kab to the volume bargained for, he is responsible for any injury to the ass). Rabha, however, said: We read in the Mishna: It is as hard *for* loading—*i.e.*, weight is weight, and the volume is an addition, and if he changed the load for a more voluminous one, although of the same weight, he is responsible for the additional volume.

There is an objection from our Mishna if it were hired to carry half a kur of wheat, and he used it for half a kur of barley: "If he has increased the size, etc., is it not meant three kabs" (as the explanation of Abayi)? Nay; it means a saah (and the Mishna is interpreted thus: If for carrying a half kur of wheat, and he used it for a half kur of barley, he is free, although he changed the article, as the change was lighter; if, however, he had increased the barley to the weight of wheat, he is respon-

sible, owing to the increase of size). But does not the Mishna state further on: "How much must the load be increased . . . a saah for a camel," etc.? This is not a continuation of the former, but a separate statement; thus, when there was no change in the article, and weight was added to the usual load, how much should be added in order to make him responsible? Symmachos says, etc.: Come and hear (another objection): "If it were for carrying a half kur of wheat, and he used it for sixteen saahs of barley, he is responsible." From which is to be inferred that if he added only three kabs he is free? Abayi explained that this Boraitha speaks of a load counted by stricken measures; according to others, reduced in weight by being worm-eaten.*

The rabbis taught: "An addition of one kab makes one responsible when he has hired one to carry a burden on his shoulders. A *lethakh* (a half kur) is an addition to a skiff, one kur for a larger boat, and three kurs are an addition for a ship (*i.e.*, if the above were added to the usual loading of the vessels named, the one who hires is responsible for damage)."

The master says: One kab for him who carries on his shoulders: but if he is a man with sense let him throw it off if it is too heavy? Said Abayi: For example, when he became sick soon after he was loaded with his burden. And Rabha said: Even if it has not occurred so, as the Mishna's statement is for the purpose of an additional payment also—*i.e.*, for this addition he has to pay him separately. R. Ashi maintains that the carrier need not throw it off, because he may have thought: "I am too weak now, but I will become stronger, and able to carry the usual weight for which I am hired," as he was not aware that the size of a kab was added. It was said above: "One kur for a larger boat," etc. Said R. Papa: Infer from this that the usual weight for a large boat is thirty kurs. To what purpose is it stated? For the purpose of business—*i.e.*, if one has hired a boat for carrying without any stipulation, thirty kurs is the usual load.

MISHNA *V.*: All specialists are considered bailees for hire. If, however, they have notified the owners that the work is ready and they may take it, and the payment should be made thereafter, they are considered from that time gratuitous bailees. If one

* This is the explanation of the Goanim, but Rashi does not agree, because it does not lessen the increase of size; he therefore interprets this in the first explanation; both, however, are too complicated, and it is difficult to understand the real meaning without a correct knowledge of the custom, weight, and measure used at that time.

says: "Guard for me this article, and I will guard yours," the depositary is considered a bailee for hire. If one says: "Guard for me this article," and the depositary answers: "Leave it with me," he is a gratuitous bailee. If one has lent money on a pledge, he is considered a bailee for hire. R. Jehudah, however, said that if he has lent him money on a pledge (without interest) he is considered a gratuitous bailee; if, however, he has lent fruit on the pledge, he is considered a bailee for hire. Aba Saul said: "One may let out a pledge of a poor man, and the money he takes for it he shall deduct from the debt of the pledger, because this is considered as if he would return a lost thing."

GEMARA: Shall we assume that our Mishna is not in accordance with R. Meier* of the following Boraitha: If one hired a cow, how shall he pay in case it is lost? (The question is asked because the law of a gratuitous bailee, a bailee for hire, and a borrower is to be found in the Scripture. A hirer, however, is not mentioned; hence the question: To whom of the above named shall he be compared?) R. Meier says: To a gratuitous bailee (as he pays for the labor done by the animal, and takes no compensation for guarding it). R. Jehudah, however, says: To a bailee for hire. (As he hired the animal for his benefit, although he pays for the labor, he is considered a bailee for hire. Now, a specialist who takes the article for his own benefit is compared to a hirer, and R. Meier considers him a gratuitous bailee.) It can be said as Rabba b. Abuhu, who has changed the names in the above Boraitha and taught: R. Meier said, To a bailee for hire; and R. Jehudah said, To a gratuitous bailee.

If, however, they have notified, etc. There is a Mishna (in Chapter VIII. of this tract): "If the borrower told the lender to send through a messenger, and he did so, he is responsible for an accident; and the same is the case when he returns it in that way." Said R. Na'h'man b. Papa: We have learned the same in our Mishna; if they all said: "Take yours, and the money you may pay afterwards," it is considered a gratuitous bailment. Is it not to be assumed that the same is the case if he has notified the owner that the work is ready (without adding something to it)? Nay; "Take yours" is different.

Huna Mar b. Mrimar, in the presence of Rabina, raised a contradiction between the two Mishnayoth mentioned above,

* Elsewhere it is explained that all anonymous Mishnayoth are in accordance with R. Meier, and this Mishna being anonymous, hence the question.

and afterwards explained them as follows : In our Mishna it is stated: If they said, " Take yours," etc., they are considered from that time bailees for hire ; and the same is the case if they have notified the owners that the work is ready for them. Is it not a contradiction from the above-cited Mishna that if the borrower told him to send, etc., he is responsible ? (Hence we see that it is considered under the control of the borrower even when he returned it, and this contradicts the statement in our Mishna, which is, that as soon as the specialist has notified the owner of the article that it is ready for delivery it is considered under the control of the owner.) And he himself answered that Raphram b. Papa said, in the name of R. Hisda, that the cited Mishna treats of when the borrower has returned the loan through his messenger before the agreed time has elapsed (consequently it was under his control unquestionably); but if he did so after the elapse of the agreed time, he is free.

The schoolmen propounded a question: What is meant by the expression " free " ? Is it meant free of the responsibility of a borrower (who is responsible for an accident also), but that he is still responsible as a bailee for hire (who must pay for theft and loss), or does it mean entirely free from any charge ? Said Amimar: It seems that he is free only from the responsibility of a borrower, but not from the responsibility of a bailee for hire ; as he has derived benefit from it, he is considered such.

There is a Boraitha supporting Amimar as follows: " If one bought utensils from a specialist to send to the house of his father-in-law, with the understanding that if they are accepted he will pay their value, if not, he will pay according to the benefit he shall derive from the pleasure they will give to the house of his father-in-law because of their being sent as presents: if an accident happens to the utensils while on the road thither, the buyer is responsible. If, however, the accident occurred while the utensils are being returned, he is free, for he is considered a bailee for hire (for he derives them from the benefit mentioned above), who is not responsible for an accident (and this is in accordance with the theory of Amimar).

There was a man who sold wine to his neighbor, and the buyer said : " I shall carry it to such a place : if I sell it there, you will be paid ; if not, it will be returned to you " ; and an accident occurred while returning it. When the case came before R. Na'hman, he made him responsible. Rabha objected from the above-cited Boraitha, which states that if an

accident occurred while on the road thither, he is responsible, and while returning, he is free ; and R. Na'hman answered : "This returning is to be considered as if it were on the road still for sale, because common sense says that if he could sell it while returning he would certainly do so."

Guard for me, etc. Why so ? Is this not to be considered a guard in the presence of the owner (as at the same time the article guarded was stolen, the owner of it was caring for the article entrusted to him in return, and the Scripture plainly reads [Ex. xxii. 14]: "But if the owner thereof be with it," etc.; and this is explained further on to mean, if the owner is with him in the same labor) ? Said R. Papa : The Mishna means to say : "You guard for me to-day, and I will do so for you to-morrow."

The rabbis taught: If one say: "Guard for me this article, and I will guard yours to-morrow ; or, lend me, and I will lend you" ; "guard for me, and I will lend you," or *vice versa*, all are considered bailees for hire, one to the other.

There were sellers of spices who agreed that each one of them should be engaged one day in each week in preparing food for the whole company. One day they said to one of their number : "Go and bake bread for us," and he replied : "Then guard for me my garment." They, however, neglected to do so, and the garment was stolen ; and when the case came before R. Papa, he made them responsible. Said the rabbis to R. Papa : Why should they be responsible ? Was not the neglect in the presence of the owner ? And he was embarrassed. Finally it was learned that at the time the garment was stolen its owner was not occupied in baking, but was drinking beer (consequently the decision of R. Papa was a just one). But why was R. Papa embarrassed ? There is a different opinion between the Tanaim in such a case. According to one, he is free ; and according to the other, he is not. Could not R. Papa say that he agreed with the latter? The case was, the day on which he was told to bake for the company was not the day appointed for him, and he was asked to do this as a favor. He, however, says : "For this favor you will favor me by guarding my garment," and it was not owing to wilful neglect that it was stolen. And R. Papa made them responsible according to the law of a bailee for hire ; and the rabbis told him that the company ought not to be held responsible, because of the law concerning a guard in the presence of the owner, to which *all* agree that there

is no responsibility, and therefore he was embarrassed ; but finally it was learned that his decision was correct as stated above.

There were two men on the road; one was tall and the other was short. The tall man was riding an ass, and had with him an ironed sheet for a covering, and the short one was covered with a cloak (a woollen one). When they came to cross a stream, the short man placed his cloak upon the ass, and instead of it took the sheet of the tall man and wrapped himself up in it, and the water carried it away. When the case came before Rabha he made him responsible. Said the rabbis to Rabha : Why should he be responsible ? Was it not in the presence of his owner (*i.e.*, at the same time the sheet was lost, the lender was crossing the stream with the borrower's cloak ; is this not equal to the case, " guard my article, and I will do so with yours," of which it is said above that if it was at the same time there is no responsibility) ? And Rabha was embarrassed. Finally, it was learned that the short man took it without the consent of his comrade, and he also placed his cloak upon the ass without consent.

There was a man who let his ass to his neighbor, and told him : " See that you do not take the way by the river of Paqud, owing to its marshy road ; take the way of the city of Narsh, which is dry." The man, however, took the way by the river of Paqud, and the ass died ; when he returned he said : " It is true I took the way by the river mentioned, but there was no marsh." And when the case came before Rabba he said : This man may be trusted, as, if he were to tell a lie, he would say, " I took the way of Narsh." Said Abayi to him : Such a supposition cannot hold good when there are witnesses (*i.e.*, it is known to all that the way by the mentioned river is marshy).

Guard this, etc. Said R. Huna : If the depositary said : " Leave it here for you," he is not a gratuitous bailee and not a bailee for hire (*i.e.*, he has no responsibility whatever, as it can be understood to mean : " You, yourself can guard it in this place "). The schoolmen propounded a question : If he said : " Leave it anonymously," how is the law ? Come and hear : " Guard it for me," and he answered, " Leave it here for me," he is considered a gratuitous bailee; from which is to be inferred that, if an anonym, he is not considered a bailee at all. On the other hand, from the above decision of R. Huna, that

the one who said "Leave it for you" is not considered as any bailee, it is to be inferred that if he said "Leave it" only, he is considered a gratuitous bailee. Therefore, nothing is to be inferred from the cited Boraitha. But shall we assume that on this point the Tanaim of the following Mishna differ? If he has brought him his things with the permission of the owner of this court, the owner is responsible. Rabbi, however, maintains that in all mentioned cases the owner is not responsible unless he accepted it for the purpose of guarding. Nay, perhaps the reason for the decision of the rabbis is because a court is usually a place where things are safe, and when the owner gave the permission to bring in the things, he did so with the intention of guarding them; but in our case, which concerns a public place, the expression "Leave it" may be understood to mean, "Leave it and guard it yourself." On the other hand, the reason for the rabbis' decision may be because usually one must have permission to enter a court belonging to a private person, and when he asked leave to place his things in the court, he answered, "Enter"—*i.e.*, "enter and guard your things yourself"; but in a public place the expression "Leave it" may be understood to mean, "Leave it and I will take care of it," as, otherwise, does the man have to ask permission from him to leave it there?

On a pledge, he is a bailee for hire, etc. Our Mishna is not in accordance with R. Eliezer of the following Boraitha: "If one lends money on a pledge, and the pledge was lost, he may take an oath that there was no wilful neglect in guarding it, and collect his money from the borrower; so is the decree of R. Eliezer." R. Aqiba, however, maintains the defendant may claim, "You have lent me the money only on this pledge, and as the pledge is lost, so is your money." But if he lends a thousand zuz on a note, and also added a pledge, then all agree that he loses his money in case the pledge is lost (as then the pledge is not for any other purpose than to collect the money *from it* in case of default; otherwise the note would be sufficient even from an encumbered estate. Hence we see that R. Eliezer considers the possessor of the pledge a gratuitous bailee, contrary to our Mishna).

Shall we assume that the above-mentioned Tanaim speak of a case in which the pledge was not worth the amount lent upon it, and their point of differing is in a case which is similar to Samuel's following theory: "If one lends to his neighbor a

thousand zuz, and pledges for them the handle of a scythe only, if the handle is lost, the thousand zuz are lost (as he accepted it as a pledge for his money, he intends to collect his money only from it)? Nay, when the pledge was not worth the amount lent, none of them agrees with Samuel, as they speak of a pledge worth the amount lent, and the point of their differing is R. Itzhak's following decision: Whence do we deduce that a creditor acquires title to the pledge? From [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God." Now, if the lender does not acquire title to the pledge, what righteousness is there? But how can you understand it in this way? Was, then, R. Itzhak's decision in a case where the article was pledged at the time the money was lent? The above verse cited by him treats of a pledge taken by the court (as explained elsewhere). Have you ever heard that he said the same when it was pledged at the receipt of the money? Therefore, we must say, that all agree with R. Itzhak, and they speak of a case where it was pledged at the time of receiving the money, and the point of their differing is in regard to a guardian of a lost thing [*supra*, p. 00], of which R. Joseph's decision was that he is a bailee for hire.

But is it to be assumed that as to the above decision of R. Joseph the Tanaim differ? Nay; all agree with his decision. Here, however, they differ in case the lender uses this pledge for the purpose of deducting from the debt. According to one, a meritorious deed was done by him by lending the money (for which he will be rewarded), and he is therefore considered a bailee for hire; and according to the other, the using of the pledge is for his own sake, and there is no meritorious deed, and therefore he is considered a gratuitous bailee.

Aba Saul said, etc. Said R. Hannan b. Ami in the name of Samuel: The Halakha prevails in accordance with Aba Saul; and he also decided so only for a hoe; a stone-cutter's chisel and a hatchet, which are frequently used, pay, the wearing off of them being very little.

MISHNA *VI.:* If one carries a barrel from one place to another, and breaks it, whether he was a gratuitous bailee or for hire, he must swear (that there was no neglect), and is free. Said R. Eliezar: I have also heard that in both cases he has to take an oath, but was wondering how such a decision could hold good.

GEMARA: The rabbis taught: If one carries a barrel from

one place to another for his neighbor and breaks it, whether he was a gratuitous bailee or for hire, he must swear ; so is the decree of R. Meier. R. Jehudah, however, says : If he was a hired man, he must pay.

R. Eliezar said, etc. Shall we assume that R. Meier holds that stumbling is not considered wilful neglect ? Have we not learned (First Gate, p. 62) that if one has not removed his broken pitcher or his fallen camel from a public thoroughfare, and upon it some one is injured, R. Meier makes him responsible. And the sages, however, maintain that he is free in civil court, but responsible in heavenly court, and we are aware that the point of their differing is whether stumbling is considered a wilful neglect ? Said R. Hyya b. Aba in the name of R. Johanan : This oath is an enactment of the sages, as, if it would not be made, no one could find a man to carry a barrel for him.

What shall he swear ? Said Rabha : " I swear that I broke it unintentionally " ; and R. Jehudah comes to teach us that the oath is only for a gratuitous bailee, but that a bailee for hire must pay, each according to the law applicable to them (as in my opinion stumbling is not considered a wilful neglect, but between a neglect and an accident, therefore it must be compared with the law of stolen or lost, and there was no enactment of the sages at all) ; and R. Eliezar (of our Mishna) comes to teach that he has a tradition that R. Meier is right in his decision, but I do not understand how an oath could be given to both kind of bailees, as an oath is correct only concerning a gratuitous bailee, who has to swear that he has not neglected (as I also agree with R. Jehudah that stumbling is not considered neglect). But what should a bailee for hire swear ? That he has not neglected ? He must pay even then. And also concerning a gratuitous bailee, an oath would do if in the place where he had to pass was a declivity in the middle of the alley ; but if not, how can he swear that he has not neglected, when he was stumbling on an even way ? (and this, as said above, " is considered between neglect and accident"). And finally, in case of a declivity also, an oath should be given only when there are no witnesses that such was in the way ; but if there are witnesses, why an oath ? Have we not learned in the following Boraitha : Aissi b. Jehudah said : The Scripture reads [Ex. xxii. 10, 11] : " No man seeing it, then shall an oath of the Lord be between them both." But if there was a man who had seen it, then he must testify, and the defendant is acquitted.

There was a man who carried a barrel of wine on the main street of the city of Mahuza, and broke it on a beam projecting from a wall. When he came before Rabha he said : In the main street many people are passing ; go and bring witness that there was no neglect on your part and you will be acquitted. Said R. Joseph, his son, to him : Is your decision in accordance with Aissi (mentioned above) ? And he answered: Yea; as I hold with him.

There was a man who sent a messenger to buy for him four hundred barrels of wine, and he did so, but thereafter he informed the sender that the contents of all of them became sour. When the case came before Rabha, he said : If such a considerable quantity of wine became sour, people would talk about it, and become aware of where the barrels were placed, and what was the reason the wine became sour. You are therefore responsible, unless you bring witnesses to show that at the time you bought it the wine was good, and was spoiled by an accident. Said R. Joseph, his son, to him : Is your decision in accordance with Aissi ? And he answered : Yea ; as so the Halakha prevails.

R. Hyya b. Joseph enacted in the city of Sikhra that the carrier who carries his burden by means of carrying poles, if he carries barrels of wine, and they break, he has to pay half damages only. Why so ? Because with a burden which is too heavy for one and too light for two, it is to be considered between neglect and accident. They, however, who carry by means of trimmer beams must pay the whole (because taking such a heavy burden, which needed the strength of two, is considered a wilful neglect).

There were carriers who broke a barrel of wine belonging to Rabba b. b. Hana, while in his service, and he took their garments for the damage caused ; and they came to complain before Rabh, who commanded Rabba b. b. Hana to return their garments. And when the latter questioned him : Does the law prescribe so ? He answered : Yea ; as it is written [Prov. ii. 20] : " In order that thou mayest walk in the way of good men." Rabba b. b. Hana did so. The carriers, however, complained again : " We are poor, we were working the whole day, we are hungry and have nothing to eat." And Rabh told Rabba he must pay them for their labor. And he asked again : Is so the law ? And he answered : Yea; as it is written [*ibid.*, *ibid.*] : "And observe the path of the righteous."

CHAPTER VII.

REGULATIONS CONCERNING THE TIME A LABORER HAS TO WORK, WHAT HE MAY OR MAY NOT CONSUME OF THE ARTICLE HE IS WORKING, AND ABOUT MUZZLING AN OX WHILE LABORING.

MISHNA *I.:* One cannot compel his employees to come earlier or depart later than is customary at a place, although it was agreed upon. Where it is customary for the employees to get food, the employer must do so. In places where it is customary to furnish them with vegetables, he must do so, and all according to the custom of that country (although it was not stipulated in the agreement).

It happened with R. Johanan b. Mathia, who said to his son : Go and hire laborers for us. He did so, with the understanding that they should be fed ; and when he came to his father, he said to him : " My son, if you should provide them with meals like the banquets of King Solomon at his time, you are not sure that you have done your duty, as they are children of Abraham, Isaac, and Jacob. Therefore, go and tell them, before they begin their labor, that they are to be fed with bread and pulse only." Said Rabban Simeon b. Gamaliel : It was not necessary at all, as all must be done according to the custom of the country.

GEMARA : Is this not self-evident ? The Mishna means to say, that even when he has increased their wages he cannot say that he did so that they should begin earlier and depart later than customary, as the employees may claim that the increase of wages was for the purpose of making a good job.

Resh Lakish said : " It is advisable for a laborer that when he departs from his labor he should relinquish a little of his time for the employer (*i.e.*, that if the custom was to work from morning until dark, he shall not manage to come home at twilight, but to stay at his work until dark). In the morning, however, he has not to leave his home before sunrise (*i.e.*, that from the time of leaving home to his place of labor he should be considered as laboring)."

But to what purpose was this statement? Let them observe the custom of that city? He alludes to a new city. But even then let him observe the custom where they come from? He means when the laborers were hired from different cities with different customs. And if you wish, he speaks in case the agreement between the employers and employees was that they shall do their work as a laborer mentioned in the Scripture [Psalm civ. 22, 23]: "The sun ariseth. . . . Man goeth forth unto his work and to his labor until the evening."

R. Zera lectured; according to others, R. Joseph taught: It is written [*ibid.*, *ibid.* 20]: "Thou causest darkness, and it becometh night, wherein creep forth all the beasts of the forest." This world is compared to the darkness of night. All the beasts, etc., means the "wicked," who are compared to wild beasts. "The sun ariseth in the world to come," means to the upright. "They withdraw to their lairs," means the wicked to Gehenna. "And lie down in their den," means the upright, as each upright one has a dwelling in the world to come, according to his honor. "Man goeth forth unto his work," means the upright are going to receive their reward. "And to his labor until the evening," means he who has completed his work, while alive, until the day of death.

R. Eliezar b. R. Simeon met the chief of police who was engaged in capturing thieves, and said to him: How can you capture them? Are they not compared to wild beasts (according to others, he quoted to him the following verse [*ibid.* x. 9]: "He lieth in wait in a secret place like a lion in his den," etc), and perhaps you capture respectable men, and the wicked remain at large? And he answered: What can I do? I am so ordered by the king. Then he rejoined: I will instruct you how to do. Enter a wine-house at the fourth hour of the day (first meal-time), and if you will see a man drinking wine, holding his goblet and slumbering, make an investigation about him. If he is a scholar, he was certainly engaged in his studies at night; if he is a laborer, it may be he was engaged in his labor at night; and if he was a night laborer, and it was not heard that he was working at night, still it must be investigated—perhaps he has done such labor that causes no noise; but if this man is nothing of this kind, he is surely a thief, being engaged the whole night in his miserable work, and you may capture him. This advice was heard in the ruler's house, and it was decided *that the reader of the letter himself should be the messenger.* (This

was the parable at that time, which means that the adviser himself should be engaged for the same purpose.) R. Eliezer was brought and appointed to capture the thieves, and so he did. Sent to him R. Jehoshua b. Kar'ha : " Vinegar descending of wine " (this parable was also applied to men of reputable origin who turn to bad habits), " how long will you deliver people of the Lord for slaying ? " And he answered : " I weed the thorns of the vineyard." And the above R. Jehoshua sent to him again : " Leave it for the owner of the vineyard ; he himself will weed the thorns." One day he was met by a washman, who called him " Vinegar descending of wine " ; and he thought, because the man was so brazen he must be wicked, and gave orders to capture him, which was done. When his wrath abated he tried to release him, but he could not, and he applied to himself the verse [Proverbs, xxi. 23] : " Whoso guardeth his mouth and his tongue, guardeth his soul against distresses." Finally the prisoner was to be hanged, and R. Eliezer stood under the gallows and wept. Said the prisoner to him : " Rabbi, do not be sorry ; I and my son have committed adultery on the Day of Atonement." The rabbi, placing his hand on his abdomen, said : Rejoice mine entrails ; if your doubts are so, how is your certainty. I am sure that no worms shall consume you after death. The same case happened with R. Ismael b. R. Jose, that he was ordered by the Government to capture thieves. Elijah met him and said : " How long will you deliver the people of the Lord for slaying ? " And he answered : " What can I do ? So is the order of the king ! " And Elijah rejoined : " Your father escaped to Assia ; you can do the same to Ludqia."

[Both R. Ismael b. R. Jose and R. Eliezer b. R. Simeon were so big-bellied that when they were standing face to face a yoke of oxen could pass under them.] R. Johanan said : I am a remainder of the beauties of Jerusalem.

He who would like to see a beauty similar to that of R. Johanan shall take a silver goblet just out of the worker's hands, with the mark of the flame still to be seen on it, and shall fill it with the germs of scarlet " rumna," put on its top a crown of red roses, and place it between the sun and the shadow ; and in the reflection from it one may see but a part of R. Johanan's beauty.

Is that so ? Did not the master say that the beauty of R. Kahana is similar to R. Abuhu ? The latter beauty is likened to that of Jacob the patriarch, and his is likened to the beauty

of Adam the first ; hence R. Johanan was not mentioned among the beauties ? Because he had no beard.

R. Johanan used to sit by the gate of the bath, so that when the daughters of Israel would return from taking their legal bath, they should meet him, and bear children like to him in beauty and scholarship. And when the rabbis questioned him : Are you not afraid of an "evil eye" ? he answered : I am a descendant of the children of Joseph, and no "evil eye" can do harm to them ; as it is written [Genesis, xlix. 22] : "Joseph is a fruitful bough, a fruitful bough by the eye."* And R. Abuhu said: Do not read "by the eye," but "above the eye" (which means that no eye can do harm to him). R. Jose b. Hanina said : He infers this from the following verse [*ibid.* 48] : "And let them grow into a multitude" (like fish, etc.).† As the water covers the fish in the sea, so that the eye can do no harm to them, so is it with the descendants of Joseph.

One day R. Johanan was bathing himself in the Jordan. When Resh Lakish saw him, he jumped into the Jordan, and came to him. Said R. Johanan to him : Your strength shall be devoted to the study of the Torah. Rejoined Resh Lakish : Your beauty is fit for women. Said R. Johanan : If you will repent (and leave your profession), I will give you my sister, who is still more beautiful than I am. Resh Lakish accepted this proposition [and when he was about to jump for his garment, he could not do so (Rashi explains this by saying that because he accepted the yoke of the Torah he lost his strength)]. R. Johanan then instructed him and made a great man of him. One day there arose a dispute in college about the time at which different new iron weapons, as swords, knives, etc., became subject to defilement. R. Johanan said : From the time they were taken from the furnace ; and Resh Lakish said : From the time they are taken out of the cooling water. Said R. Johanan : The former robber understands his handicraft (knows the nature of deadly weapons). Rejoined Resh Lakish : And what good have you done me ? When in my old profession, I was also called master, as in my new profession. Rejoined R. Johanan : I have done much good to you, as I brought you under the

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* The term in the Scripture is עין, which has two meanings, "eye" and "spring." Leeser translates it by "spring" ; the Talmud, however, takes it literally.

† The expression in the Scripture is *Veyidgoo.* Dag in Hebrew means fish ; hence the analogy in text. Leeser, however, translates it according to the sense.

wings of the Shekhinah. R. Johanan was nevertheless dejected, and Resh Lakish became ill. The wife of Resh Lakish, who was the sister of R. Johanan, came to the latter and wept, saying: Pray for his health, for the sake of my son. And in response he cited the following verse: "Leave thine orphans to me, I will give them their livelihood" [Jerem. xlix. 11]. She continued weeping: Do pray, for my sake, that I am not left a widow. And he cited to her in answer the end of the same verse. Finally, R. Simeon b. Lakish's soul went to rest, and R. Johanan grieved very much after him. And the rabbis of the college were searching for a man who would be able to soothe him, and decided that R. Elazar b. Pdath, whose decisions are original, would be fit for this task. And he went to R. Johanan's college and sat before him, and when R. Johanan said anything, he used to say: There is a Boraitha which supports you. Then R. Johanan exclaimed: Is it you who desires to replace bar Lakish? In his time, when I said anything, he raised twenty-four objections, and I had to make them good with twenty-four answers, so that the discussion became very animated. You, however, say to everything: There is a Boraitha which supports you. Am I not aware that my saying has a good basis? Finally, R. Johanan tore his garments, wept, and cried: "Where art thou, bar Lakish? Where art thou, bar Lakish?" He continued crying until he became demented, and the rabbis prayed for his death, and his soul went to rest everlasting.

Notwithstanding that R. Simeon b. Eliezar said above that he is sure all his deeds were just, he was not satisfied, and prayed for mercy from Heaven, and invoked upon himself chastisements, and became so afflicted that in the night they had to spread under him sixty felt spreadings, and in the morning they removed from him sixty basinfuls of blood. In the morning his wife used to make for him sixty kinds of pap, which he ate, and became well. His wife, however, would not allow him to go to the college, in order that he might not be troubled by the rabbis; and so he used to say every evening to his afflictions: "Come, my brothers," and in the morning, "Go away, for I do not want to be prevented from studying." One day his wife heard him call the afflictions, and she exclaimed: You yourself bring these afflictions upon you! You have exhausted the money of my father (through your illness). She left him and went to the house of her father. In the meantime it happened

that sailors made him a present * of sixty slaves, each of them holding a purse with money ; and the slaves prepared for him daily the sixty kinds of pap he used to eat. One day his wife told her daughter : Go and see what your father is doing. And she went. Her father then said to her : Go and tell your mother that we are richer than her parents. And he applied to himself the verse [Prov. xxxi. 14] : " She is become like the merchant ships, from afar doth she bring her food." Finally he ate, drank, became well, and went to the college, and there he was questioned about sixty kinds of blood of women, and he purified all of them.† The rabbis murmured, saying : Is it possible that of such a number there should not be a doubtful one ? And he said : If it is as I have decided, all of them shall bring forth male children ; if not, then there shall be at least one female among them. Finally, all of the children were born males, and were named Eliezar after him. [There is a Boraitha, Rabbi said : " Woe to the wicked Government which has prevented R. Eliezar from attending the college, and, because of this, the multiplying of Israel."] When he was about to die, he said to his wife : I know the rabbis are angry with me (for I have captured many of their relatives as thieves), and they will probably not attend my funeral as they ought to do. You shall therefore leave me in my attic, and you shall not be afraid of me. Said R. Samuel b. R. Na'hmani: I was informed by the mother of R. Jonathan that she was told by the wife of R. Eliezar that no less than eighteen and no more than twenty-two years after his death she kept him in his attic. She used to ascend every day to examine his hair, and found nothing, and when it happened that one hair fell out, blood was visible. One day she found a worm in his ear, and she was dejected. But he appeared to

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* Rashi explains that while sailing they were in danger of being wrecked by violent storms, and they prayed to be saved because of the merits of Eliezar, and they were saved miraculously, and therefore they made him this present.

† There is a custom even now among the orthodox Jews, that when a blood-stain is found on the sheet of a married woman, it is carried to the rabbi to determine if it is that kind of blood for which the woman must be separated for two weeks, and after that time to take a legal bath ; or whether the stain is not that kind of blood for which she must be separated ; as there is a Mishna [in Tract Nida, Chap. II.] that five colors of blood are considered unclean (*i.e.*, for which she must be separated), and the other kinds are not considered blood, and she may have intercourse with her husband without taking the prescribed legal bath. Hence the sixty kinds of blood mentioned in this legend. The number "*sixty*" seems to be a favored number with them for exaggeration.

her in a dream, telling her : It is nothing to be dejected for, as this is a punishment for allowing a young scholar to be insulted in my hearing, and not protesting against it, as I ought to have done. When two parties had a law-suit, they used to come and stand by the door, and each of them would explain his cause. Thereafter a voice was heard from the attic: You, so-and-so, are just with your claim; or, You, so-and-so, are unjust. It happened one day that his wife was quarrelling with a neighbor, and the latter exclaimed: It may occur to you, as to your husband who is not buried. And when the rabbis heard this, they said: When this conduct goes to such a length, it is an insult to the deceased. According to others, R. Simeon b. R. Jo'hai, his father, appeared to one of the rabbis in a dream, and said: There is my little dove among you, and you do not care to bring it to me. And the rabbis decided to employ themselves with his funeral. However, the inhabitants of Akhbria would not let them remove R. Eliezar from his attic, because during all the years R. Eliezar slept in his attic not a wild beast had come to their city. On one eve of the Day of Atonement the inhabitants of the city mentioned were troubled, and took away the guard from R. Eliezar's house ; and the rabbis hired some men of the village of Biri, and they took the corpse with the bed and brought it to the rabbis, who removed it to the cave of his fathers. They, however, found the cave surrounded by a snake, and said : Snake, snake, open thy mouth, and let the son enter to his father. And it did so. Rabbi then sent a message to the widow that he would like to marry her, and she answered : An object which was used by a holy man should not be used by an ordinary man. There is a parable: Should the hook which was used by the hero to hang up his weapon be also used by Kulba the shepherd to hang up his knapsack ? Sent Rabbi to her: Let it be granted that he was greater than myself in wisdom. Was he also greater than I in meritorious acts ? And she answered : You admit, then, that he was greater in wisdom than you, of which I was unaware. I am, however, aware that in meritorious acts he was greater than you, as he submitted to chastisements, which you did not.

Where is it known that R. Eliezar was greater in wisdom than Rabbi ? When Rabban Simeon b. Gamaliel and R. Jehoshua b. Kar'ha were sitting in the college on benches, R. Eliezar and Rabbi were sitting before them on the floor, objecting and answering (discussing the Halakhas taught). And once the

sages said: We are drinking the water of the two young men, and we let them sit on the floor! They prepared benches for them, and they occupied them. Said R. Simeon b. Gamaliel to Rabbi: I possess only one little dove (only one son), and you want me to lose it (he was afraid of an "evil eye," as Rabbi was then too young). And they made him descend to his former seat on the floor. Then R. Jehoshua b. Kar'ha said: Is it right that he who has a father shall live, and he who has not shall die? (*i.e.*, because R. Eliezar was an orphan, we shall leave him on the bench without fear of an "evil eye," even though he was of the same age as Rabbi). They therefore made R. Eliezar also take his former seat on the floor. Eliezar became dejected, saying: They compare me to him. Until that time, when Rabbi said anything, R. Eliezar used to support him; from that time, however, when Rabbi used to say: I have to object, R. Eliezar would say to him: You mean to object from this and this; here is the answer to your objection, and also to an objection you intend to raise from this and this, and so you are surrounding us with lots of objections which are of no value. Rabbi became dejected, and came to complain before his father, who answered: You should not be angry, as he (Eliezar) is a lion, the son of a lion, and you are a lion, the son of a fox. And this is what Rabbi said elsewhere: There were three modest men, my father, the children of Bathyra, and Jonathan the son of Saul. My father, as said above, that he compared himself to a fox; the Beni Bathyra, as it is said (Passover, p. 127), that they who were princes themselves have left their places to Hillel, as he was greater in wisdom than they; and Jonathan b. Saul, as it is written [I. Samuel, xxiii. 17]: "And thou wilt be king over Israel, and I will be next unto thee." [But perhaps Jonathan said so because he had seen that the whole world was sympathizing with David; and also the Beni Bathyra, because they were compelled to do so, as they could not answer the questions submitted to them; therefore R. Simeon b. Gamaliel was certainly one of the modest men of the world.]

Said Rabbi: I see that chastisements are favored. And he accepted for himself afflictions for thirteen years, six of them with cold chills, and seven of them with scurvy.

The riding-master of Rabbi was wealthier than King Sabur. When he used to feed the animals of Rabbi, the voices of the animals were heard for three miles. And he used to do this at the time Rabbi was doing the necessary of men, and he was

crying so from pain that his voice was heard all over the neighborhood ; and notwithstanding the voice of the animals, his voice was heard farther, so that even the sailors on the sea heard him. (Says the Gemara :) Nevertheless, the afflictions of R. Eliezar b. R. Simeon were of more value than Rabbi's, as the former's were caused by love, and went away for the same reason ; and Rabbi's were caused by an act, and went away also in the same manner. Caused by an act, as follows : There was a calf which was about to be taken for slaughtering, and it ran away, and put its head under the garment of Rabbi, and cried. And Rabbi answered : Go; you are created for this purpose. Then it was said by Heaven that, as he has no mercy with creatures, he shall be afflicted with chastisements. And the afflictions also disappeared because of the following act: One day his female servant was about to dispose of kittens, and Rabbi said to her : Leave them alone ; it is written [Psalm cxlv. 9]: " And his mercies are over all his works." Then it was said by Heaven : Because he has mercy with creatures he shall be dealt with mercifully and relieved from his chastisements.

During all the years R. Eliezar was suffering from his afflictions, men were not dying before mature age; and during all the years Rabbi was suffering from his illness, it never happened that the country was in need of rain. It chanced that Rabbi came to the place where R. Eliezar used to dwell, and asked whether that upright man had left a son. And he was told that there was a son, and every prostitute whose price was two dinars paid *to him* four dinars. And Rabbi sent for him, surrendered him to R. Simeon b. Aissi b. Lqunia, the brother of his mother, and left for him a diploma as rabbi, against the time that he should be able to graduate. The first few days the youth used to say : I will return to my place. And his uncle tried to persuade him to give his attention to study, saying : People want to make you a scholar, and you will be rewarded with a golden candlestick, and named Rabbi, and you say you will return to your former place. He persuaded him so much that he swore never to mention it again. When he grew up he went to the college of Rabbi, and when the latter heard his voice he said : The voice of this young man is similar to the voice of R. Eliezar b. R. Simeon. And he was told that this youth was his son. Rabbi then applied to him [Prov. xi. 30] : " The fruit of the righteous is the tree of life, and the wise draweth souls to himself." " The fruit of the righteous means R. Jose b. R.

Eliezar, and the wise, etc., means R. Simeon, his uncle." When this R. Jose died, they brought him to the cave of his father, and found it encircled by a snake. The rabbis said : " Akhna, akhna (snake), open thy mouth, and let the son enter to his father. But it did not listen to them. They thought it was because his father was a greater man. A heavenly voice, however, was heard : Not because the father was greater than the son, but because the father was suffering with his father in the cave,* which was not the case with R. Jose b. Eliezar.

It happened once that Rabbi came to the city where R. Tarphon used to dwell, and asked whether the same, who used to swear by his children (I shall bury my children if it is not so-and-so), left a son. And he was told that he left no son, but a grandson of his daughter, and he is such a beauty that the prostitutes paid him. He sent for him, and told him : If you will repent I shall give you my daughter. And he did so. According to some, he married Rabbi's daughter, and thereafter divorced her; and according to others, he did not marry her at all. People should not say that he repented only for the sake of this woman. [But what was the reason that Rabbi troubled himself so much in such cases ? It was because it was said by R. Jehudah, in the name of Rabh ; according to others, R. Hyya b. Abba, in the name of R. Johanan ; and still according to others. R. Samuel b. Na'hmani, in the name of R. Jonathan : He who teaches the law to the son of his neighbor is rewarded by becoming a member of the heavenly college ; as it is written [Jeremiah, xv. 19] : " Behold, thus said the Lord : . . . Thou shalt stand before me, and if thou bring forth the precious from the vile, thou shalt be as my mouth." And he who teaches the law to the son of a commoner, even if there was an evil heavenly decree against the world, it is abolished for the sake of this meritorious act, as it is written in above-cited verse.

R. Parnakh, in the name of R. Johanan, said : He who is a scholar himself, and also his son and also his grandson, the Torah does not depart from his children for everlasting ; as it is written [Isaiah, lix. 21]: " And my words which I have put in thy mouth shall not depart out of thy mouth, nor out of the mouth of thy children, nor of the mouth of thy children's children, said the Lord, from henceforth and unto all eternity." The repetition, " said the Lord," in the same verse signifies that the Holy One,

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* See Sabbath, p. 58.

blessed be He, says : " I am the surety that so it will continue." What is meant by eternity ? Said R. Jeremiah : In the later generations the Torah returns to its old inn.

R. Joseph fasted forty days, and he heard a heavenly voice : " It shall not depart out of thy mouth." He fasted another forty days, and heard : " It shall not depart out of thy mouth and out of thy children." He fasted then forty days more, and he heard : " Also out of the mouth of thy children's children." He then said : For the later generations I have no more to fast, as the Torah usually returns to its old inn.

R. Zera, when he ascended to Palestine, fasted one hundred days in order to forget the Gemara of the Babylonians, to the end that he should be no longer troubled by them. Then he fasted another hundred days, that R. Eliezar might not die during his life, as then he would have to bear all the troubles of the congregation. Then he fasted another hundred days more, that the fire of Gehenna might not affect him. Every thirty days he used to examine himself by a heated oven, and the fire did not affect him. It happened, however, one day, that the rabbis gave their eyes to this, and he burned his hips, and henceforth he was named " the little one with the burned hips."

R. Jehudah said in the name of Rabh : It is written [Jeremiah, ix. 11, 12] : " Who is the wise man that may understand this ? And who is he to whom the mouth of the Lord hath spoken, that he may declare it ; for what is the land destroyed ?" etc. The beginning of the verse was questioned by the wise, but without a result. The continuation of the verse was questioned by the prophets, and also without any result, until the Holy One, blessed be He, explained it himself in the succeeding verse : " And the Lord said : Because they forsook my law, which I had set before them."

Said R. Jehudah in the name of Rabh : " The words which I have set before them " (which are superfluous, as it is written above, " my law ") signifies that even when they were occupied in the study of the law, they have not pronounced the prescribed benediction for it (and with this they have shown that the law is not respected by them as it ought to be).

R. Hama said : It is written [Prov. xiv. 33] : " In the heart of the man of understanding resteth wisdom," which means " a scholar a son of a scholar " ; " but (the little which is) in the bosom of fools is made known " means " a scholar the son of a commoner." Said Ula : This is what people say : A single issar

in a pitcher makes kish-kish. (A single coin in a pitcher proclaims its presence.) Said R. Jeremiah to R. Zera : What is the meaning of [Job, iii. 19] : " The small with the great is there, and the servant free from his master " ? Are we ignorant that the great and small are there ? It must therefore be interpreted thus : He who makes himself little for the purpose of studying the Law in this world, he becomes great in the world to come ; and also he who hires himself for a slave to the Law in this world, he becomes a lord in the world to come.

Resh Lakish used to mark the caves of the rabbis (to the end that priests might not step on them, as it is prohibited to them to defile themselves by graves). When he was about to do so with the cave of R. Hyya, it was concealed before him, and he became dejected and said : " Lord of the Universe! Have I not occupied myself with the discussions of the Torah like R. Hyya ? " And a heavenly voice answered him: Yea, thou hast occupied thyself as much as R. Hyya, but thou hast not multiplied the Torah as much as he did.

When R. Hanina and R. Hyya were quarrelling, said the former to the latter: Are you quarrelling with me, who am able to renew the Torah, should it be forgotten, by means of my ingenious discussions? And he answered him: Are you quarrelling with me, who have caused that the Torah should not be forgotten in Israel ? I did thus: I have sown flax, prepared nets of it, caught deer, made of their skins parchment, and with their meat I fed orphans. I wrote on the parchment the five books of the Pentateuch, each on a separate roll, and used to go to a city, taking five little boys, instructing each of them in one of the above books until they knew the contents by heart. I took also other six boys, and instructed each of them in a different section of the Mishnayoth, saying to the boys, " Until I return, each of you shall teach the others the book which is known to one of you and not to the other " ; and so I have caused the Torah not to be forgotten in Israel. And this is what Rabbi exclaimed : How great are the acts of Hyya! Said R. Ismael b. R. Jose to him : Are they then greater than yours, master ? And he answered : Yea! Greater also than my father's ? (Questioned R. Ismael again.) And he said : Nay! No one could bear such in his mind.

R. Zera said: Yesterday night R. Jose b. Hanina appeared to me in a dream, and I questioned him: Where are you placed in

the heavenly college? And he answered: By the side of R. Johanan. And where is R. Johanan placed? By the side of R. Janai. And where is R. Janai placed? By the side of R. Hanina. And R. Hanina? By the side of R. Hyya. I then said: Is not R. Johanan worthy to be placed by the side of R. Hyya? And he answered: To a place which is illuminated and from which rays come forth, who will dare to bring into it the sun of Napha? R. Habiba said: I was told by R. Habiba b. Surmkhi, who has seen one of the rabbis to whom Elijah frequently appeared, that in the morning his eyes were nice and in the evening they were red, as if burnt by fire. And to the question, What is the matter? he told me: I have asked Elijah to show me the rabbis while ascending to the heavenly college. And he rejoined: At all of them you may look, but toward the palanquin of R. Hyya you must not look. And how shall I recognize it? All the rabbis are accompanied by angels when ascending and descending, except the palanquin of R. Hyya, which does so of itself. I, however, could not restrain myself, and gazed upon it. Then two rays blinded my eyes. On the morrow I went to the cave of R. Hyya, fell upon it, and prayed, saying: I am studying the Boraithas of you, O master! and I occupied myself with their explanations; then I was cured.

Elijah used to appear frequently in the college of Rabbi. On one of the days during new-moon, it was a bright day, and Elijah did not appear; and when he questioned him thereafter the reason why, he rejoined: It takes time until I awake Abraham, wash his hands, await until he prays, and bring him afterwards to sleep again. The same I do with Isaac, and the same with Jacob. Rabbi questioned him again: Why do you not awake all of them at the same time? "This I am not allowed, as it is to be feared then, if they should all pray together, they would bring the Messiah before his time." And Rabbi asked him: Is their equal to be found in this world? And he said: Yea! There are R. Hyya and his sons. Rabbi then ordered a fast-day, and placed R. Hyya and his sons on the altar, and when they came to the benediction, "He who causes the wind to blow," a wind came, and when they came to the words, "He who causes rain," rain came. When, thereafter, they were about to say the benediction of "resurrection," the world began to tremble, and in heaven it was questioned, "Who has revealed the secret to mortals?" And Elijah was found guilty,

and they punished him with sixty fiery lashes. He then appeared on the altar as a fiery bear, and scattered them.

Samuel of Ir'hina was the physician of Rabbi. When Rabbi had sore eyes, he was about to inject some medicine into them, and Rabbi said : I cannot endure it. He then wanted to apply salve to the eyes, but Rabbi prevented him, as even this he would not endure. He then poured some medicine into a tube under his head in bed, and he was cured. Rabbi troubled himself to invest Samuel with the title " Rabbi," but never had the opportunity, and Samuel said to him : Let the master not be so sorry. I have seen the book which was shown to Adam the first, and there it is written : " Samuel of Ir'hina will be named a sage, but not a rabbi, and Rabbi will be cured through him." It is also written there : " Rabbi and R. Nathan are the finishers of the Mishnayoth. R. Ashi and Rabina will be the finishers of the Gemara." *

R. Kahana said: I was told by R. Hama, the son of Hassa's daughter, that R. b. Na'hmani's death occurred by conspiracy, namely : It was denounced to the Government that there was a man among the Jews who prevented thirteen thousand Jews from paying head-tax one month in summer and one month in winter time (*i.e.*, that in the months of Nissan and Tishri about thirty thousand men went to hear Rabba's lectures for the holidays, and the officers of taxes could not find them at home to collect the taxes. The Government sent an officer to take him, but could not find him at home. He went in search of him from Pumbaditha to the cities of Aqura, Agina, Ch'him, Tripha, and Eina Damim, and from Eina Damim back to Pumbaditha. It happened that the officer took the same inn in which Rabba was concealed. There was a set table for the officer, and after he drank two goblets of wine the table was taken away, and it happened that the face of the officer was turned backwards. The host came to Rabba, and questioned him what to do, as he was

* Rashi explains this, that until their time the Gemara was not in any order, as in the colleges a Mishna was discussed only in relation to money matters, food, etc., the Halakha thereof being questioned in a college ; and then there was discussion, and each gave a reason for his opinion, and the same was done if some one questioned the reason of such and such a Mishna, without a practical act; and so the whole Gemara was mixed together, without any order in sections or tracts, and Rabina and R. Ashi were the first who gathered all the discussions of the colleges until that time, and also at that time arranged them into sections and tracts in accordance with the Mishnayoth ordained by Rabbi in sections and tracts. See footnote, Chap. II., pages 79, 80.

afraid of trouble because of the misfortune which happened to the officer of the king ; and Rabba ordered that a table should be set again with one goblet of wine, and thereafter to take the table away. They did so, and the man was cured. Then the officer said : I am now certain that the man I want is here. And he searched for him and found him, saying : I will go from here and report that I could not find him. Should they put me to death, I will not disclose it ; but should they torture me, I will tell the truth. He then took Rabba, locked him up in a chamber for men, and took the key with him. Rabba prayed, and the wall fell miraculously; he ran away and went to Agina, sat down on a *crudum* of a tree, and was starving. In the meantime there was a dispute in the heavenly college about a case of purity, in which some of them decided that it is impure and some of them pure, and it was decided that R. b. Na'hmani should decide the case, as he used to say that he was the only one who knew the law of Nagaim and the only one who knew the law of Oh'loth. They sent the angel of death for him, but he could not touch him, as he did not cease studying one moment. In the meantime a wind blew and made noise with the trees of the forest, and Rabba thought that the officers were after him and said: It is better for me to die than to be taken by the Government. And when he was dying, he was questioned about the dispute in the heavenly college, and he decided it was pure. Then a heavenly voice came forth, saying : Well is it with thee, R. b. Na'hmani, that thy body is pure, and that thy soul left thy body while thou wast saying " pure." A *pitiacium* (writing) fell in the city of Pumbaditha : " Rabba b. Na'hmani was taken to the heavenly college." Then Abayi, Rabha, and all rabbis of the college went to occupy themselves with his funeral ; but they did not know where to find his body, and they went to Agina, and they saw a swarm of birds which made a shade under them, and they remained so, without moving, and the rabbis understood that this was the place where the dead was to be found. And they lamented for him three days and three nights. Another *pitiacium* was found : " He who will separate himself will be put under the ban." And they lamented for him seven days more. Then another *pitiacium* (from heaven) fell : " Go to your houses in peace."

On that day that Rabbi died a storm arose and threw a certain merchant who was riding on a camel on one side of the River Papa to the other side of the same. Being astonished, and ask-

ing, What is it? he was answered: Rabba b. Na'hmani is dead. He then arose and said: "Lord of the Universe! The whole world is thine, and Rabba b. Na'hmani is also thine. Thou dost love Rabba, and Rabba loveth thee—why, then, shouldst thou destroy the world?" And the storm abated.

R. Simeon b. Halaphta was a fat man.* On one hot day he ascended to the top of a mountain to cool himself, with his daughter, telling her to fan him, promising her therefor a talent's worth of nard. In the meantime a wind began to blow, and he said: How many talents' worth of nard is to be given to the Lord of the winds?

And all according to the custom of the country, etc. What does the Mishna mean by adding the word "all"? It means in places where it is usually the custom to give the laborers, after their meal, a certain measure of beverage, so that the hirer had no right to say to the laborers to bring vessels for this purpose, but provide for them himself.

It happened with R. Johanan b. Mathia, etc. Is not this fact a contradiction to the Mishna's statement? The Mishna is not completed, and must read thus: If, however, the hirer has promised them food in such places as it is customary to furnish them with food without any promise, it must be considered that he has to furnish them with something better than customary, as it happened with R. Johanan b. Mathia, who said to his son: Go and hire laborers for us. He did so, with the understanding that they should be fed, and when he came to his father, he said to him: "My son," etc., . . . "as they are children of Abraham, Isaac, and Jacob."

Shall we assume that the meals of Abraham were better than those of Solomon? Is it not written [I. Kings, iv. 22, 23]: "And Solomon's provision for one day was thirty kors of fine flour and sixty kors of meal, ten fatted oxen, and twenty pasture oxen, and a hundred sheep, besides harts, and roebucks, and fallow deer, and fatted fowl." And Gurion b. Astirin, in the name of Rabh, said that the fine flour and meal were only for skimming the foam; and R. Itz'hak said, that each wife of the thousand Solomon had, used to prepare such a meal, thinking that he would come to partake his meal with her. And concerning Abraham it is written [Gen. xviii. 7]: "And Abraham ran unto the herd, and fetched a calf tender and good." And R.

* Because in the beginning of this legend it was spoken of fat men, this legend was also brought in (Rashi).

Jehudah said in the name of Rabh: A "calf" is one; "tender," two; and "good," three? Abraham took three oxen for three men (which makes an ox for each man). And concerning Solomon there were for the many people of Israel and Judah, as it is written [I. Kings, iv. 20]: "Judah and Israel were numerous as the sand which is by the sea," etc.

What is meant by fatted fowl? Rabh said: Crammed fowl. And Samuel said: They were fat without cramming. And R. Johanan said: An ox fed without doing any labor, and a hen that is not occupied with hatching.

R. Johanan said: The best of cattle is an ox, and the best of fowls is a hen. Said Ameimar: R. Johanan meant a black hen that feeds herself in the vineyard with the seeds of grapes.

It is written [Gen. xviii. 7]: "And Abraham ran unto the herd," etc. Said R. Jehudah, in the name of Rabh: A "calf" is one; "tender," two; and "good" is three. [Why not say one, as people say tender and good? Then it should be written, a "good, tender calf." Why "and good"? To signify that it was another one. But then there are only two? As the words "and good" signify another one, so signifies also the word "tender."] Rabba b. Ula, according to others R. Hoshia, and still according to others R. Nathan b. Hoshia, objected. Is it not written [*ibid.*, *ibid.*]: "And gave him to a young man, and he hastened to dress *him*"?*—*i.e.*, that each of them he gave to a separate man for dressing. Farther on it is written: "And he took cream and milk, and the calf which he had dressed," *i.e.*, that each which was ready first, he placed before them. But why were three necessary. Was not one sufficient? Said R. Hanan b. Rabha: He wanted to give to each of them a whole tongue with mustard.† Said R. Tan'hum b. R. Huilar: One must not change the custom of that place where he abides, as Moses, when he ascended to heaven, did not eat; and the angels of heaven, when they descended to earth, ate and drank. Ate and drank! Have they then a stomach? Say: it seemed as if they were eating and drinking.

R. Jehudah said in the name of Rabh: All that Abraham did for the angels by himself, the Holy One, blessed be He, did for his children by himself; and what Abraham did through a messenger, the Holy One did the same for his children through a

* The expression in Scripture is *Outhou*, and means "him," which is singular. The translators of the Bible translate "it," according to the sense.

† Rashi explains that such a meal was only prepared for kings.

messenger: "And *Abraham* ran unto the herd"; "and a wind went forth from the *Lord*" [Numb. xi. 31]. "*He* took cream and milk"; "*I* will let rain for you bread from heaven." "And he stood by them"; "*I* will stand before thee" [Ex. xvii. 6]. "And Abraham went with them" [Gen. xviii. 16]; "And *the Lord* went before them" [Ex. xiii. 21]. "*Let* a little water"; "and *thou* shalt smite the rock" [Ex. xvii. 6]. And the same (Rabh) differs with R. Hama b. Hanina, who said that in reward for three things which Abraham had done his children got three things; namely, for the cream and milk they were rewarded with *mannah;* for that "he stood by them" under the tree, his children were rewarded with the pillar of cloud; and for "let a little water," etc., they were rewarded with the well of Miriam.

"*Let a little water,*" *etc.* Said R. Janai b. Ismael: The angels said to Abraham: Do you suspect us to be Arabs who bow themselves to the dust of their feet? Thou hast a son, Ismael, who is doing so.

"And the Lord appeared unto him in the grove of Mamre . . . in the heat of the day" [Gen. xviii. 1]. What does this signify? Said R. Hama b. Hanina: This day was the third of Abraham's circumcision, and the Holy One, blessed be He, made him a sick call; and to the end that Abraham should not trouble himself with guests, the Lord caused the day to be intensely hot, so that no one should go out. He, however, sent out his servant, Eliezer, in order to search for guests. He went, but found none. Abraham said: I do not trust you (this is what people say, there is no trust in slaves), and went out himself. Seeing the Lord, blessed be He, standing by the door, for that it is written: "Pass not away, I pray thee, from thy servant" [Gen. xviii. 3] (and to favor him, the Lord sent three angels), and for that it is written: "And he lifted up his eyes and looked," etc. [*ibid.*, *ibid.* 2]. "He ran to meet them." But is it not written, he stood near them? Why, then, did he run after them? Previously they were standing near him, but seeing that he was afflicted with pain, they withdrew, and he ran after them.

Who were these three men? Michael, Gabriel, and Raphael. Michael came to give the message to Sarah, Raphael to cure Abraham, and Gabriel to destroy Sodom. But is it not written [*ibid.* xix. 1]: "And two angels came to Sodom"? Michael accompanied Gabriel, in order to rescue Lot, and so it seems to

be as it is written : " And *he* overthrew," etc. [*ibid.*, *ibid.* 25]. It is not written they have done so. Why is it written concerning Abraham : " So do as thou hast spoken "? [*ibid.* xviii. 5] ; and concerning Lot it is written, " and he pressed upon them " ? [*ibid.* xix. 3]. Said R. Elazar: Infer from this, you may decline an offer from a person inferior to yourself, but not from a superior. It is written: " And I will fetch a morsel of bread " ; and after this it reads: " And Abraham ran unto the herd." Said R. Elazar: Infer from this, that the upright promise little and do much, and the wicked promise much and do nothing. And where do you take it from ? From Ephron [*ibid.* xxiii. 15]: " A land . . . what is between me and thee " ; and farther on it reads: " And Abraham understood the meaning of Ephron . . . four hundred shekels of silver current with the merchant " [*ibid.* xix. 16]. Hence they did not take any other money but such as was current with merchants.

" And they said unto him, Where is Sarah thy wife," etc ? Said R. Jehudah, in the name of Rabh, according to others in the name of R. Itz'hak : Did the angels not know that Sarah was in her tent ? Why did they ask for her ? In order to increase her grace in the eyes of her husband. R. Jose b. Hanina, however, said : For the purpose of sending her a goblet of benediction.

It was taught in the name of R. Jose : Why are the letters A j v of the word אלין pointed in the Holy Scrolls ? The Torah teaches us to be kind in worldly affairs, that when one comes as a guest, he may make inquiries of the host for the health of his wife.

" After I am waxed old," etc. [Gen. xviii. 12]. Said R. Hisda : After her body was wrinkled, and the folds increased, the body was again made smooth, the wrinkles of age were straightened out, and beauty returned. It is written [*ibid.*] : " My lord being old " ; and farther on it is written : " I am old." Hence, the Holy One, blessed be He, did not refer to Abraham, as she said. From that the disciples of R. Ismael said : Great is the peace, as even the Lord changed her words for the purpose of peace, as it is written : " She said my lord is old . . . since I am old."

It is written : " Who would have said unto Abraham that Sarah should have given children suck ? " [Gen. xxi. 7]. How many children did Sarah suckle ? There was only one. Said R. Levi : That day on which Abraham weaned Isaac, he made a

great banquet ; and his neighbors of all nations murmured, saying : Behold, an old man and an old woman took a child from the market, proclaiming him for their own son. And this is not enough for them, but they are giving banquets, to convince people that it is as they say. What did our father Abraham ? He had invited all great men in his generation, and Sarah our mother invited their wives, and every one of them brought her child along, but without their nurses, and a miracle occurred to Sarah, that her breasts opened like two springs, and she nursed all the children there. But it was still murmured and said : As Sarah was only ninety years old, it is possible that she had borne a child miraculously; but Abraham, who is over a hundred years, how is it possible that he should be able to beget children ? Then the face of Isaac at once changed, and became of the appearance of Abraham, so that every one proclaimed that Abraham begot Isaac. Until the time of Abraham there was no mark of old age, and he who wanted to talk to Abraham spoke to Isaac (when he was grown up), or *vice versa ;* then Abraham prayed, and the mark of old age was visible, as it is written [*ibid.* 47] : " And Abraham was old." Until the time of Jacob there was no sickness (and death occurred suddenly); and Jacob prayed that sickness would come before death; as it is written [*ibid.* xliii. 1]: " Behold, thy father is sick." Until the time of the prophet Elisha there was no one who became cured from sickness; but Elisha, however, prayed and was cured; as it is written [II. Kings, xiii. 14]: " Elisha was sick of the sickness whereof he had to die," which signifies that previously he was sick and cured.

The rabbis taught: Three times was Elisha sick. First at the time he discharged Gekhsee from his service, and secondly when he set the bears on the children [II. Kings, ii. 24], and the third time when he died.

With bread and pulse only. Said R. A'ha b. R. Joseph to R. Hisda: Does the Mishna state bread of pease or bread and peas ? And he answered: By God the letter " Vahv " (which means " and ") is required to be as large as a rudder of the Labroth.

Rabban Simeon b. Gamaliel, . . . all must be according, etc. What does he mean by the word " all " ? This was learned in the following Boraitha: " If one hires a laborer, to pay him in accordance with the custom of this city, he may pay him according to the smallest scale of wages; so is the decree of

R. Jehoshua. The sages, however, say the payment must be at a middle rate, neither too high nor too low."

MISHNA *II.:* The following laborers have a right, according to the law of Scripture, to partake of the fruits of their laboring: They who are engaged with the growing of produce may partake of that which is ripe, but is still attached to the ground, and also of the produce which is already cut off from the ground, but not yet ready for delivery. However, the above must be produced from the ground. They must not, however, partake of the fruits of their laboring if the produce is attached to the ground, but not ripe, and also if it is cut off and ready for delivery; neither may they partake of the fruits of labor of which the products do not grow in the ground (as, *e.g.*, the milking of cattle or the making of cheese).

GEMARA: Whence is all this deduced? It is written [Deut. xxiii. 25]: "When thou comest in thy neighbor's vineyard, thou mayest eat," etc. This is only concerning a vineyard. Whence do we know that the same is the case with other places? We infer it from the case of the vineyard, thus: As in a vineyard, the products of which come forth from the ground, a laborer may eat of its fruits when they are ripe, the same is the case with other things brought forth from the ground, when they are ripe. But it can be said that this law is only concerning a vineyard, because the law of gleaning [*ibid.*, *ibid.* xxiv. 21] applies only to gleaning; therefore we may infer this from stalks [*ibid.* xxiii. 26]: "When thou comest into the standing corn of thy neighbor, thou mayest pluck," etc. But even to this there is a separate law, which applies to stalks only; namely, to separate the first dough. Then we turn again to the vineyard, and to the former question it is answered that there is a separate law of gleaning; we turn again to the stalks, and the conclusion is that both cases have separate laws which apply each to itself specially, and one to the other specially. In one thing, however, they are alike, the products of both are brought forth from the ground, and when ripe a laborer may partake of them. The same is the case with all products that are brought forth from the ground, and when they are ripe the laborer engaged in producing them may partake of them. But their likeness is further seen in that they are brought to the altar (wine to the offerings, and fine meal to meal-offerings)? Therefore, olive trees may also be inferred from this, as oil from the olives is also brought to the altar with the meal-offering. [Is it, then, necessary to

infer olives from vineyards and stalks? Are the olives themselves not called a vineyard; as it is written [Judges, xv. 5]: "And burnt up both shocks and standing corn, as also oliveyards"?* Said R. Papa: It is named a vineyard of olives (Kerm Zayith), but not indefinitely a "vineyard," which does not include olives. And the above-cited verse reads, "when thou comest in the vineyard," therefore olives are to be inferred from above.]

But, after all, whence do we deduce about all other products which cannot be inferred from what is mentioned above, as all are distinguished by separate laws applying only to them? Therefore said Samuel: We infer all from the words of above-cited verse [Deut. xxiii. 26]: "But a sickle shalt thou not move," which means that to all products under a sickle the same law applies. But is this verse not needed to teach that one may partake of them as long as the sickle is used, but not thereafter? Nay; this is inferred from the previous verse [25]: "But into thy vessel shalt thou not put it." But according to Samuel's theory, whence do we deduce about products which are not under the sickle (as, *e.g.*, dates, etc.)? Said R. Itz'hak: It is to be inferred from the words "standing corn" that the same is the case with all products which are standing. But was it not previously said that this cannot be inferred from stalks, as they are distinguished with the law of the first dough? This was said before it was learnt that it may be inferred from the words "under the sickle"; but after it was learnt of all products which go under the sickle, the same is said of all standing products.

If so, to what purpose is written the above-cited verse 25? Could it not be deduced from the 26th? Said Rabha: It is needed to infer from it the Halakhas of the following Boraitha: It is written *Khe Th'bhau* (when thou comest), and in xxiv. 15 is written *Lou Th'bhau*, as there the verse applies to a laborer. So the verse xxv. 23 applies also to a laborer. It reads, "in thy neighbor's vineyard"; but not in a vineyard of the sanctuary. "Thou mayest eat grapes," but not drink the wine of them (*i.e.*, one shall not take the grapes, make wine, and drink it). Grapes only, but not with something else (*i.e.*, one shall not mix them with something else which might increase the appetite for them). "At thy own," *i.e.*, as if thou wouldst be the owner of

* The term in Hebrew is *Kerm Zayith*, literally, a vineyard of olives; hence the question.

them: as the owner may partake of them before the tithe is separated, so may the laborer also. "Till thou have enough," but not more; "but into thy vessels thou shalt not put"—*i.e.*, that at the time you put them in the vessels of the owner you may eat, but not when you are not so engaged.

Rabbina, however, said: There is no necessity to deduce from verses in the Scripture concerning a laborer when he is engaged with the products when they are already cut off from the ground, and also for an ox that it may eat from the attached products of the ground, because it is written [Deut. xxv. 4]: "Thou shalt not muzzle the ox when he thresheth out the corn." Now let us see! This law applies to all animals, as it is stated in First Gate (p 127). It ought to read: "Thou shalt not thresh with a muzzled ox." Why, then, is ox mentioned? To compare the muzzled with the muzzler (*i.e.*, the man who muzzles the cattle). As the muzzler may eat of the attached article when it is ripe, the same is the case with the muzzled animal; and as the muzzled one may eat all that which is not still attached to the ground, so also may the muzzler.

The rabbis taught: It is written "threshing" [Lev. xxvi. 5]; as the threshing is only upon products brought forth from the ground, of which the laborer may eat, the same is the case with all products of the ground, excluding him who milks, and makes cheese and butter, which are not products from the ground, and of which a laborer must not eat.

Was it not deduced already from the verses stated above? Why then this Boraitha? Lest one say that because all the products which are standing were included, as stated above, therefore the products not brought forth by the ground should also be included, it comes to teach us that it is not so. There is another Boraitha: "As threshing applies only when the product of which a laborer may eat is ready, the same is the case with other products which are ready, excluding those who lop garlic and onions (for the purpose of making more room for the good plants to grow)—a laborer may not eat of these, as they are not yet ripe." And still another Boraitha: "A threshing applies to grain which is not yet fit for separating tithe, and a laborer may eat of it; the same is the case with other things which are not yet fit for separating tithes, excluding those who separate dates and dry figs, which are fit already for separating tithes—the laborer must not eat thereof." But did not another Boraitha state that a laborer who does so may eat thereof? Said

R. Papa: That Boraitha speaks of unripe dates which are taken off the trees in vessels made of palms, and are soaked in oil until they become ripe, and at that time they are not yet fit for separating tithes. There is still another Boraitha: "As threshing applies to such things as are not yet ready for separating the first dough, a laborer may eat thereof; but he who kneads or bakes must not eat of that which he handles, because it is already fit for the first dough; and this Boraitha speaks of countries which are out of Palestine, to which the law of tithe does not apply."

The schoolmen propounded a question: May a laborer roast the grain on fire and eat it? Shall we say that this is the same as grapes with something else, which is not allowed, or is this different? Come and hear! It is allowed for the owner of a vineyard to give to his laborers wine, that they do not eat too many grapes; and the laborers also may soak their bread in herring-pickle, that they may eat more grapes thereafter (hence we see that such things are allowed). (Says the Gemara:) The schoolmen did not question whether the men prepare *themselves* to eat more or less; their question was only whether it was allowed to prepare the fruit by sweetening it, that it might become better for eating? Come and hear! Laborers may wait until the sun warms the grapes before eating of them; they are not allowed, however, to heat grapes over fire (hence it is not allowed). From this nothing is to be inferred, as it may be it is not allowed because of the loss of time, and the question of the schoolmen refers to when he has with him his wife or children, who may heat the grapes for him? Come and hear! A laborer who is engaged in separating spoiled figs, dates, grapes, or olives may eat of them, though tithe is not yet separated; to eat them with their bread, however, they are not allowed, unless they do so with the consent of the owner. Neither may they use salt in eating them (hence to heat over fire is all the less allowed). (Says the Gemara:) Neither from this is anything to be inferred, as salt is certainly equal to grapes with something else, which is not allowed, as stated above.

The rabbis taught: Cows which are engaged in separating the shells from barley that has been dried in an oven, or which are threshing grain of heave offering or of tithe, there is no transgression when one muzzles them. However, that people who are not aware the grain is of such a kind may not be misled, a handful of the grain may be taken and put in a sack and

hung on their necks. R. Simeon b. Johai, however, said: He may put spelt in sacks and hang them on their necks, as spelt is better for the cow in every instance. There is a contradiction from the following: "Cows that are engaged in shelling grain when they are muzzled, there is no transgression; if, however, they are threshing heave offering or tithe, there is transgression if they are muzzled. The same is the case when an Israelite does the threshing with the cow of a Gentile; if, however, a Gentile threshes with the cow of an Israelite, there is no transgression." Hence there is a contradiction in the statements of the Boraithas in the case of heave offerings and tithes? It presents no difficulty. One Boraitha treats of the heave offering of the tithe, which is not doubted; and the other treats of a suspicious one (De Mai).

The schoolmen questioned R. Shesheth: "How is the law if the animal is sick and the consuming of grain injures it? May it be muzzled?" Shall we assume that, when commanded not to muzzle the animal, it is because what it may consume is good for it, so that, in the case questioned, muzzling is allowed; or is the above commandment because of the suffering of the animal on seeing the grain and not being able to eat of it, in which event the muzzling is prohibited even in the case mentioned? And he answered: This we have learned in the Boraitha mentioned above, as Simeon b. Johai said: "He may bring spelt, etc., because spelt is better for the cow." Hence we see that the reason for prohibiting muzzling is because the grain is good for the cow.

The schoolmen propounded a question: "May one say to a Gentile: Muzzle my cow and thresh with it? Shall we assume that the rabbinical prohibition to do through a Gentile what is prohibited for an Israelite to do himself is only concerning Sabbath, the violation of which is a crime, but that the prohibition of muzzling, which is only a negative commandment, does not exist in such a case, or is there no difference?" Come and hear! "When a Gentile threshes with the cow of an Israelite, the Israelite does not transgress if the animal was muzzled." Is it not to be inferred that he does not transgress the commandment, but that, nevertheless, the muzzling is prohibited? Nay; from this expression nothing is to be inferred, as it may be that it is used only because of the same expression in the case of an Israelite threshing with the cow of a Gentile, in which it was necessary to state that he commits a transgression. (Then) come and

hear! A message was sent to the father of Samuel with the following question: When Gentiles steal bulls and castrate* them, and return them to the owners, may the Israelites use them or not? And his answer was: "There is craft used in doing this thing. Use the same with the owners, and make them sell the animals" (to Gentiles, so that the owners may not use them for ploughing. Hence we see that the violation of even a negative commandment, which is not a crime, must not be committed through a Gentile). R. Papa, however, said: "The people of the west, who sent the above question, hold with R. Hidga, who maintains that the children of Noah (*i.e.*, others than Jews) are warned biblically against castration, and the owners of the above-mentioned castrated oxen transgressed the commandment [Lev. xix. 14]: "Thou shalt not put a stumbling-block before the blind." Rabbi meant to say that the answer of the father of Samuel, "Make them sell them," meant that they were to be sold for slaughtering, so that no one should use them any more. Said Abayi to him: "It is sufficient fine for the owner that he must sell them for any purpose, and to any one, Israelite or Gentile."

There is no doubt that a son of full age is considered a stranger to his father that he may sell to his son; but how is the law with a minor son? R. A'hi prohibits, and R. Ashi allows. Maremar and Mar Zutra, according to others, two certain pious men, used to exchange between themselves the oxen in question for other ones. Rami bar Hamai questioned: "Does one transgress if he has placed the young one of the cow on the outside of her for the purpose of keeping the cow from consuming the grain while threshing, or if he has engaged it while it is thirsty, or if he has spread a *καταβολή* on the grain?" One of the questions at least may be resolved from the following Boraitha: The owner of the cow is allowed to make it hungry that it may eat more while threshing; he may also give it sufficient food beforehand, that it may not consume much while threshing (and this can be compared to spreading a *katabole*, hence it is allowed).

R. Jonathan questioned R. Simai: "How is the law if he has muzzled the animal outside of the field? Shall we assume that the Scripture prohibits muzzling it while threshing only, or

* Castrating is prohibited to Israelites biblically, and the Gentiles, who were friends of the Israelites, used to steal the bulls for this purpose, and return them afterwards. Hence the question.

does the Scripture mean that grain shall not be threshed with a muzzled animal?" And he answered: "This can be deduced from [*ibid.* x. 9]: "Wine or strong drink shalt thou not drink, . . . when you go in unto the tabernacle"; from which it could be inferred that this is prohibited when you go in, but not previously. However, it reads [*ibid.*, *ibid.* 10]: "So that you may be able to distinguish between the holy," etc., which means you must not go in while drunk (no matter when you have used the strong drink). The same is the meaning here: there shall be no muzzling while threshing.

The rabbis taught: "He who muzzles a cow and he who pairs two kinds of animals in one wagon is exempt from the punishment of stripes, as it applies only to the threshers and the leader of them."

It was taught: "If one has muzzled a cow only with his voice (*e.g.*, when the animal is about to eat of the grain he stops it with his voice), or if one leads the two kinds of animals with his voice only (without holding the bridle), according to R. Johanan he is guilty, because his voice is considered an act, and according to Resh Lakish he is free, as the voice is not considered an act. R. Johanan objected to the decision of Resh Lakish from the following Mishna (Themura): "One is not allowed to exchange; but if he has done so, the exchange is valid, and he is punished with forty stripes" (hence we see that though it was done by mouth only, it is considered an act, for which he is punished with stripes). And he answered: This Mishna is in accordance with R. Jehuda, who holds that one is to be punished with stripes for violation of a negative commandment, even if there is no *physical* act; but how can this Mishna be explained in accordance with R. Johanan? Did not the same state in its first part that the law of exchange applies to every one, male as well as female? And to the question: What does it mean by adding the expression "to every one" (would not "he" be sufficient for male or female)? The answer was: To include an heir, and this is certainly not in accordance with R. Johanan, as he holds that an heir cannot exchange, and also has no right to lay his hands upon an offer? The Tana of the Mishna cited holds with R. Johanan in one thing, but differs from him on the other point.

The rabbis taught: He who muzzles the cow while threshing is punished with stripes, and pays for the cow four kabs, and for an ass three kabs of fodder. But how is it possible that one

should be punished for one crime with two punishments? We are aware that if, *e.g.*, one deserves stripes for one crime, and for another, death, the stripes must be omitted, and the same is the case with a crime for which he has also to pay for the damage he has done when the crime was committed; the first punishment only must be imposed, and he is free from payment? This Boraitha is in accordance with R. Meir, who says that both are imposed. Rabha, however, said: There are many cases in which, although one is not obliged to pay the damages, he nevertheless has to pay, from a moral standpoint; and my support is from the Scripture, which forbids the hire of a harlot to be used in the temple, even if she was a relative, for which crime one is to be stoned (hence the hire is considered a payment), although it is not collected by the court. R. Papa said: The reason he has to pay in this case, despite his punishment with stripes, is because the obligation to pay was incurred before the crime for which he is to be punished with stripes was committed; he has to feed the animal as soon as he takes possession of it, and he cannot be punished with stripes until he has done work with it.

R. Papa said: The following two things were questioned of me by the disciples of R. Papa bar Abba, and I decided one of them in accordance with the law, and the other differently; namely, May one knead dough with milk or not? And my answer was: "Nay," according to the law [see Psachim, p. 45]; and the other question was, May one enter two kinds of animals in one stable? And I prohibited this, not in accordance with the law, as Samuel allows it. R. Jehuda said: One may gender one kind of animals with his hands without any fear even for immorality, as his mind is occupied with the expected product. R. A'hdbui b. Amui objected: There is a Boraitha: If the Scripture read [Lev. xix. 19]: "Thy cattle shalt thou not let gender," only, I would say that one must not gender any kind of animal at all; but as it is added, "with a diverse kind" (*kilaem*), it signifies that only *kilaem* is prohibited. But with one kind of cattle one may gender; and also, in that case, he may only hold it for this purpose. Hence we see that only to take hold is allowed, but not to gender? The expression, "to take hold," means to gender; and it was used only because of its being a nicer expression.

R. Ashi said: I was questioned by the disciples of R. Nehemia the Exilarch as follows: "Is it allowed for one to enter in

one stable two kinds of animals with their females? Shall we assume that because there are male and female of the one kind it does not matter about the presence of another kind, or is even this not allowed?" And I have answered them in the negative, not in accordance with the law, but because of the immorality of the Exilarch's slave.

MISHNA *III.:* The labor of a workingman entitles him to consume the fruit of that with which he is laboring, no matter with which member of his body he is doing the work; so that if he has worked with his shoulder, without occupying his hands or feet, it is sufficient. R. Jose ben R. Jehudah, however, maintains that he is entitled only when he employs his hands and feet in the work.

GEMARA: What is the reason of this statement? It is written [Deut. xxiii. 25]: "When thou comest into thy neighbor's," etc., signifies that it suffices when he enters to labor with any member of his body. And what is the reason of R. Jose's statement? He maintains that the muzzler shall be equal to the muzzled one; as the latter is entitled only when it is occupied in its labor with its hand and feet, the same is the case with the muzzler.

Rabbi bar Huna questioned: If one threshes with geese and cocks, how is the law according to R. Jose's theory? Does R. Jose mean that one is entitled to eat only when he works with all his strength? And if so, then the geese and cocks which are working with all their strength are entitled to eat. Or does he mean, literally, the hands and feet, and as in this case they have none they are not entitled to eat? This question remains undecided.

R. Na'hman, in the name of Rabbi bar Abuhu, said: Laborers who enter the wine-press are entitled to eat grapes, but not to drink wine; however, they are entitled to both if they cross the whole length of the wine-press while laboring.

MISHNA *IV.:* If one is occupied with pressing dates, he must not consume grapes, and *vice versa;* however, he may wait until he reaches the places where the good ones are to be found, and eat from them. In all cases it is said that he may consume only while he is laboring. In order not to waste the time of the owner, it was enacted that the laborers may consume when they are going from one place to another, and also when they are returning from the wine-press; and also an ass is entitled to consume while unloading.

GEMARA: The schoolmen propounded a question: If one was occupied with one vine, may he take a bunch of grapes from it to consume while laboring on another vine? If we assume that a laborer is entitled to consume of that kind which is to be put in the vessel of the owner, then he certainly may do so, or he is entitled to consume only from those which are to be put in the vessel of the owner; and as the grapes of the first vine were not to be put in the owner's vessel, he may not eat of them; and lest one say that he may not, then there would be difficulty in understanding why the ox, while laboring at things which are attached to the ground, may eat of them, because those attached to the ground are not to be put in the vessels of the owner. Said R. Shesheth b. R. Aidi: This case cannot prove anything, as it may mean that a branch with fruit reaches the laboring ox, but not otherwise. Come and hear. Our Mishna states that if one is occupied with dates he must not consume grapes; from which we infer that he may consume of one kind of fruit. Now, if it be not allowed to take fruit from one vine when he is going to labor on another, how could such a case be found? Said R. Shesheth b. R. Aidi: This proves nothing, as the Mishna may treat of a case where the dates were resting on the vine, or *vice versa;* and it came to teach that although he cannot occupy himself unless he takes of the dates resting upon the grapes, and one may say that in such a case he is considered to be occupied with both, the Mishna teaches that is not so (and so it is not safe to infer from this that if he is occupied with one kind of fruit in one place he may partake of it while laboring on another of the same kind). Come and hear! The latter part, "One may wait until he reaches the place where the good ones are," etc. Now, if one would be allowed to eat of the fruit on which he is not occupied, at another place where he is occupied, then why should he *wait* until he reaches the place of the good ones? Let him immediately bring and eat of it. Nay; it may be that he is not allowed to do so because of wasting time. However, if so, the question may arise: How is it if he has somebody—*e.g.*, his wife or his children who are not laboring there—and they can bring him the good ones, so that there is no waste of time; may it so be done or not? Come and hear the other statement of our Mishna: "In all cases, . . . however, in order not to waste time," etc. And the schoolmen, in explaining the reason for this statement, were about to say that because, biblically, walking is not considered labor,

one, biblically, is not allowed to eat in that case. Therefore the enactment in question was necessary, from which it is to be inferred that when one is laboring he may consume even biblically, and it may be decided that he may do so. However, it may be said that walking is considered labor, and yet according to the Bible walking is not considered labor, and yet according to the Bible one may not do so, and therefore the enactment was necessary; hence the question may be decided negatively.

An ass is entitled, etc. While unloaded! From what, then, shall it consume? Correct the Mishna so that it reads, "until it is unloaded"; and this is the same as the rabbis taught elsewhere, that an ass and a camel may consume from the load which is upon them. However, one may not take of the load with his hands and give them to eat.

MISHNA *V.:* The laborer may consume of cucumbers or dates with which he is working, even to a dinar's worth. R. Elazar b. Hasma, however, said: A laborer must not consume more than his wages; but the sages allow even this. Nevertheless, a man should be instructed that he must not be greedy, so that the doors of mankind should not be shut against him.

GEMARA: Are not the sages' statements the same as the first Tana? The point of difference can be found in the following saying of Rabh: I have found hidden scrolls in the house of R. Hyya, in which it was written as follows: "Aisi b. Jehudah says: The verse written [Deut. xxiii. 25]: 'When thou comest in the vineyard of thy neighbor,' means not only a laborer, but anybody." And Rabh himself added: "Aisi's theory does not allow any one to make a living" (*i.e.*, if it would be allowed for every one to enter the vineyard of a stranger, and to consume, as much as he likes, then nothing would remain for the owner). So that the first Tana does not agree with Aisi, and the sages do. Said R. Ashi: I have repeated this Halakha before R. Kahanah, and questioned him whether it meant laborers who are doing their work for their meal only; and he answered me: That even then one would prefer to hire men to cut off the trees of his vineyard than to have people enter and consume all it contains.

The schoolmen propounded a question: Are we to interpret the command of the Scripture, that a laborer may eat in addition to his wages (*i.e.*, the Scripture has added to his wage the consuming of the fruit he is engaged with, consequently it is a part of his wages; or is it only a kind of charity which the

Scripture commands to give him)? And the difference is, if the laborer says: "Give this that I am entitled to to my wife and children." If it is a part of his wages, this could be done; but if it is only a kind of charity, it may be said that the Merciful One has rewarded only the laborer himself, but not his wife and children. What is the law? Come and hear! R. Elazar b. Hasma said: A laborer must not consume more than his wages allow. Are we not to assume that the point of their differing is that one holds that this is a part of his wages, and the other holds that it is a kind of charity? Nay, all agree that this is a part of his wages; and the point of their differing is the explanation of the word *knaphshkha*,* which is mentioned in the Scripture [*ibid.*, *ibid.*]. One holds that this word may be interpreted, "a thing which you get with danger to your life" (*i.e.*, if one undertakes to ascend to the top of the tree in order to get the fruit), and the other interprets this word, "as thy soul" (*i.e.*, as for thy soul thou likest to muzzle thyself not to partake, thou mayest do so; the same is the case with the laborer, in some instances thou mayest prevent him from consuming). Come and hear! "A laborer who was a Nazarite, if he said, Give the grapes or wine that I am entitled to to my wife and children, he must not be listened to." Now, if this is a part of his wages, why should he not be listened to? Nay; there is another reason. People say, it must be said to a Nazarite, Go around, go around, so that you shall not meet a vineyard (*i.e.*, the things which are forbidden to him should not be found near him). Come and hear another Boraitha: If a laborer said the same, he also must not be listened to; hence if this is a part of his wage, why should he not be listened to? Nothing is to be inferred even from this, as the expression, "a laborer," may be interpreted to mean a Nazarite. But is there not a separate Boraitha which says plainly "a Nazarite"? This is no question, as the Boraithas were taught separately. One plainly states a Nazarite, and the other named a laborer, which means also the same. Then come and hear another Boraitha: From this we deduce that a laborer must not be listened to when he asks that that which he is entitled to shall be given to his wife and children, from the verse [*ibid.*, *ibid.*]: "But into thy vessel thou shalt

* *Nephesh*, in Hebrew, means "soul"; *knaphshkha*, literally, "as thy soul." Hence the expression "soul." R. Elazar maintains: "When thy soul is in danger," and the sages interpret this as: "You can do with your soul." Leeser, however, translates it according to the sense, "as thy pleasure."

not put any." And lest one say that this Boraitha also means a Nazarite, then this verse would be used as a reference, because for a Nazarite there is another reference given above? Yea; it may mean a Nazarite, but the verse belonging to a laborer is brought because one has named him a laborer.

Come and hear another Boraitha: If one hires a laborer to cut dates, he may eat of them and he is free from tithe. But if he was hired with the stipulation that "I and my son shall partake of it," *he* may and is free from tithe; his son, however, may eat only when the tithe is separated. Now, if this is a part of his wages, why, then, should his son not be free from tithe? Said Rabbina: Because the fruit used by his son is considered bought, as the son has nothing to do with it, and only consumes because of the stipulation of his father, who gave his word for it. Consequently, it is as if he had bought and sold it. Come and hear the next Mishna, which states that a stipulation can be made for all his family except the little children, etc. Now, if this is considered a charity, it is right that no stipulation should be made for his little children, if they have not reached the age of reason; but if it is a part of his wages, why should not the stipulation be of value for the children also? It may be said that it means when he does not feed them. But did not R. Hoshua teach that "one may make a stipulation for himself and for his wife, but not for his cattle; for his sons and daughters who are of age, but not for those who are not yet of age; however, for his male or female slaves whether they are of age or not"? From this we infer that all the Boraithas mentioned mean when he feeds them all; and the point of the difference is that the Tanaim of the above Boraithas and also of the cited Mishna hold that it is only a kind of charity, and R. Hoshua holds that it is a part of his wages.

MISHNA *VI.:* A laborer has the right to make a stipulation that he shall not eat what he is entitled to and take money for it instead. He has also a right to do the same for his grown son and daughter, for his wife, and for his grown-up male and female slaves, but not for his minor children or slaves, and not for his cattle, because these have no reason. If one hires laborers to work in his vineyard when it is in its fourth year (of which the fruit is prohibited), the laborers must not partake of it. If, however, he didn't notify them of the case, he must redeem the fruit and let them eat. If the round cakes of his dry figs became open, or his barrels of wine became ready for

use, so that they are fit for separating tithe from them, the laborers must not eat; but if, however, he didn't notify them at the time he hired them, he must separate the tithe and let them eat.

Watchmen of fruits are permitted to eat, according to the custom of the country, but not according to the law of the Scripture.

GEMARA: (Concerning the watchmen:) Said Rabh: The Mishna treats only of watchmen who guard vineyards, the fruit of which is still attached to the tree, and therefore, according to the Scripture, they are not to eat of it when it is not yet ripe. But they who guard wine-presses and heaps of grain are permitted to eat even in accordance with the law of the Scripture; for the reason that guarding is considered a labor. Samuel, however, maintains that the Mishna treats of those who guard wine-presses and heaps of grain; but they who guard vineyards are not entitled even in accordance with the law of the country, for the reason that guarding is not considered labor according to his opinion. R. Aha bar Huna objected to this from the following: "He who guards the red cow defiles his garments." Now, if guarding is not considered an act of labor, why should his garments be defiled? Said Rabba bar Ulah: It was enacted to be so for fear he would touch one of its members. R. Kahana objected from the following: If one guards cucumber fields, he must not fill up his belly from one garden bed, but he may eat some from each bed. Now, if guarding is not considered labor, why is he entitled to eat at all? Said R. Shimi bar Ashi: The Boraitha treats of those that were already cut off. But if so, then they are already fit for tithe? It treats in case the blossoms are not yet removed. Said R. Ashi: It seems to me that Samuel is right in his theory, and he can be supported from Mishna II. in this chapter: "The following laborers have a right to partake according to the law of Scripture," etc. From which it is to be inferred that there are such who eat not in accordance with law of the Scripture, but in accordance with the law of the country. How, then, should the latter part of the same be explained: "They have not to partake," etc.? What does the expression "not to partake" mean? If we say that they are not to partake in accordance with the law of the Scripture, but that they may partake in accordance with the law of the country, then it would be the same as in the first part; we must, then, say they are not to partake even in accordance with

the law of the country. And what is this? One who is engaged on that which is still attached to the ground and is not yet ripe, and, furthermore, the watchmen of the vineyards.

MISHNA *VII.:* There are four kinds of bailees: a gratuitous bailee, a borrower, a bailee for hire, and a hirer. (In case of loss,) the first is acquitted on taking an oath that he has not neglected his duty; the second has to pay under all circumstances; the third and fourth are acquitted in case the property entrusted to them has been broken, confiscated, or has died, but not when it has been lost or stolen.

GEMARA: Who is the Tana who states that there are four kinds of bailees? Said R. Na'hman, in the name of Rabba b. Abuhu: It is R. Mair. Said Rabba to him: Is there one who does not hold the theory of the four bailees? R. Na'hman rejoined: I mean to say that the only one who holds that a hirer and a bailee for hire are equal in law is R. Mair.

Is this so? Has not R. Mair said the contrary in the following Boraitha? For what loss must a hirer pay? R. Mair said: For the same that a gratuitous bailee must pay. R. Jehudah, however, said: For the same loss as a bailee for hire. (Hence R. Mair holds that a hirer is the same as a gratuitous bailee?) Rabba b. Abuhu has changed the names (in the quoted Boraitha). If so, then there are three, not four, kinds of bailees. Said R. Na'hman b. Itzhak: There are four kinds; the laws concerning them, however, are only three.

There was a shepherd who pastured his cattle on the shores of the River Papa. One of the cattle slipped and fell into the water. When the case was brought before Rabba he acquitted him, saying: What could he do? He has guarded them as is usual with shepherds. Said Abayi to him: In accordance with your theory, if the shepherd entered the city at the usual time, is he also acquitted? And he answered, "Yea." And what if he sleeps at the usual time, is he also freed? And the answer was, "Yea."

Then R. Abye objected to him from the following: The accidents for which a bailee for hire is not responsible are, *e.g.* [Job, i. 15], "When the Sabeans made an incursion and took them away." (Hence we see that he is responsible only for such things as he could prevent, but not otherwise. And Rabha answered: The Boraitha treats of the watchmen of the city who were hired to watch all night, so that their employers might rely upon them to prevent all accidents. Abye raised

another objection from the following: What is the extent of the duty of a bailee for hire, as, *e.g.* [Gen. xxxi. 40]: "(Where) I was in the day the heat consumed me," etc.? And he answered: This Boraitha also means the watchmen mentioned above. Abye rejoined: "Was Jacob the Patriarch a watchman of the night?" And he rejoined: "Yea; Jacob promised Laban that he would watch his (Laban's) cattle, as city watchmen watch the property entrusted to them." Abye then raised another objection from the following: "If a shepherd entered the city while his cattle were pasturing, and a wolf seizes a sheep, he must not be accursed. He must only be held responsible if it be adjudged by the court that his presence could have prevented the occurrence." Are we not to assume that the Boraitha means that the shepherd went to the city at the time that shepherds usually went there, and that even if this was the case he is held responsible for the accident? Said Rabha: "Nay; it means if he left the cattle at an unusual time."

Then, since he has neglected his duty, why should he be acquitted even if his presence could not have prevented the accident? The Boraitha treats of a case in which he (the shepherd) heard the voice of the wild beasts and fled. If so, why is it necessary to adjudge; what could he do under such circumstances? It would have been his duty to frighten the beast away by throwing stones and sticks. If so, why should only a bailee for hire do this; does not the same hold good for a gratuitous bailee? Was it not you, master, who said that if a gratuitous bailee could put the beast to flight with sticks and stones he is responsible?

Yea, I did say so; but this would only be the case if he could do this without incurring any expense; while the bailee for hire must do so even if he should incur expense. How much is it his duty to spend for this purpose? The amount that the article is worth. But where is it to be found that a bailee for hire is to be responsible for an accident, so that he is obliged to pay his own expenses? He is obliged to save them even when he must spend money, which, however, is returned by the owner.

Says R. Papa to Abye: If so, what good is it to the owner to have the property saved? And he rejoined: It saves him the trouble of buying others; besides, it is more pleasant for him to have the cattle which he is used to.

R. Hizda and Rabba b. R. Huna do not agree with the

above theory of Rabha, that if a bailee for hire has not neglected his duty he is not responsible for any accident; and the owner may say that he has paid for guarding the cattle in order that they may be guarded better than is usual.

Bar Adda of Sabula led cattle across the bridge of Narash, and one of them pushed the other into the water. When this case was brought before R. Papa, he held him responsible. When the defendant objected, saying: "What could I do?" he answered: "You could lead them across one by one." At this the defendant, however, exclaimed: "Does not the master know his people sufficiently well to know that they have not the time to lead them over one by one?" The judge then rejoined: Such claims have often been brought before the court, but they could not be taken into consideration.

Abu placed flocks at Rumnia, and Shabu, who was an errant robber, took them away. Although Abu proved that this was the case, R. Na'hman held him responsible. Shall we assume that R. Na'hman differs with R. Huna b. Abuhu, who sent a message, that if an article was thereafter stolen by accident, and the thief was identified, the depositary, if he be a gratuitous bailee, may choose either to take an oath or summon the thief. But if he was a bailee for hire he must pay and summon the thief. (Hence, as R. Na'hman made Runia, who was a gratuitous bailee, responsible, he certainly does not agree with the above theory of R. Huna?)

Said Rabha: This proves nothing. As there was military in the city where Runia was, if he called for help they would have come to his assistance.

MISHNA *VIII.:* A single wolf coming among the flock, it is not considered an accident, while two constitute one. R. Jehudah maintains that at a time when there are visitations, a single wolf is also considered an accident.

Two dogs are not considered. Jeddna d. Babylon, in the name of R. Mair, said: If both come from one side it is not, but if they come from two different sides it is. A robbery is considered an accident. A lion, a bear, a leopard, a panther, and a snake are accident when they come suddenly; but if one has led his cattle where wild beasts or robbers abound, it is not considered an accident. A natural death is an accident, but not if it is caused by cruelty. If cattle fall from a steep rock where they have gone of their own accord, it is an accident, but if they are led there, it is not.

GEMARA: But have we not learned in a Boraitha that even a single wolf is considered an accident? Said R. Na'hman b. Itzhak: The Boraitha treats of a visitation, and it is in accordance with R. Jehuda.

A robbery is considered an accident. If there is only one robber, is there not only one man against one man? Said Rab: It means if the robber was armed. The schoolmen propounded a question: "If the robber and the shepherd were both armed, what is the law? Shall we say that as there was one against one, then it is not to be considered an accident? Or shall we say that as the robber risks his life, which is not the case with the shepherd, it is? Common sense says that it is so.

Said Abye to Rabba: If a shepherd meet a robber and say to him: "You ill-reputed thief, remember that we are located in such and such a place, where we have so and so many men, so and so many dogs, and so and so many archers with us, and if you venture to come to us you will be killed"; and if, in spite of this warning, the thief ventured to do so, how is the law? And he answered: Informing the thief of the location of the pasture is equal to the statement of our Mishna about leading the cattle to the place of robbery, etc.

MISHNA *IX.*: A gratuitous bailee has the right to make a stipulation that in case of loss he shall be freed from taking an oath. A borrower may do the same so as to be freed from payment. A bailee for hire and a hirer may likewise do the same, so that they may be freed from both an oath and from payment.

A stipulation made contrary to that which is written in the Scripture is of no avail. A stipulation which is made on condition that a certain act be done in advance is of no avail. If, however, the stipulation was that a certain act be done afterwards, and it is possible to fulfil the condition, the stipulation is of avail.

GEMARA: Why can a stipulation of this kind be made? Is it not contrary to what is written in the Scripture, and therefore ought it not to be unavailable? Our Mishna is in accordance with R. Jehudah, who said that in money matters a stipulation of this kind is of avail; as we have learned in the following Boraitha: "If one says to a woman: You shall be betrothed to me on condition that I will neither support nor dress you," the betrothal is valid, but the stipulation is to be abolished. So is the decree of R. Mair. R. Jehudah, however, maintains that in regard to money matters the stipulation is valid.

But how can we interpret the statement of our Mishna in

accordance with R. Jehudah, when in the latter part it plainly states that a stipulation made contrary to the Scripture is of no avail, which is certainly in accordance with R. Mair? This presents no difficulty, as the latter may treat of other than money matters. But still, if so, how would you interpret the last part of the Mishna, which states that "a stipulation which has an act in advance," etc., and such a theory was heard from R. Mair only, as stated in the following Boraitha: Aba'ha Laphtah, the man of the village of Hananya, said in the name of R. Mair that a stipulation which is to be fulfilled before an act is valid; but if the act is to be performed afterwards it is invalid? Therefore we must say that the whole Mishna is in accordance with R. Mair; and the reason the stipulation is valid is because he freed himself from all obligations before he became a bailee.

There is a Boraitha which says that a bailee for hire may stipulate that he shall be equal to a borrower. But how shall a stipulation of this kind be made verbally only? Said Samuel: It treats of when it was made with the ceremony of a sudarium. R. Johanan, however, maintains that even when a sudarium is not necessary—as the benefit which he derives is from the reputation he earns among the people of being a trustworthy man—he makes up his mind to take all responsibility.

And it is possible to fulfil, etc. Said R. Tabla, in the name of Rabha: This is in accordance with the decree of R. Jehudah b. Tama: The sages, however, maintain that even in such a case the stipulation is of avail. As we have learned from the following Boraitha: Here is your divorce, with the stipulation that you shall ascend to heaven, or shall descend to hell, or you shall swallow a stick a hundred ells long, or you shall cross the ocean on foot. If such a stipulation is fulfilled the divorce is valid; but if not it is invalid. R. Jehudah b. Tama, however, said that such a divorce is valid. Such is the rule: a stipulation which is impossible to be fulfilled should be considered a jest, and the divorce remains valid.

Said R. Na'hman, in the name of Rabba: The Halakha prevails in accordance with R. Jehudah b. Tama. Said R. Na'hman bar Itzhak: It seems to be so, as the last expression from our Mishna agrees with him.*

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* *Thspth.* What news did R. Na'hman come to tell? This was already stated by Rabha, to which they answered in various ways. We have therefore translated R. Na'hman b. Itzhak in support of Rabha, that the anonymous Mishna agrees with him, and consequently the Halakha must so prevail.

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE SALE AND HIRING OF ANIMALS, THE EXCHANGE OF THEM, THE SALE AND LEASING OF REAL ESTATE.

MISHNA *I.:* If one borrows a cow, and at the same time hires or borrows its owner, or if he does so before borrowing the cow, and the cow dies while they were laboring, the borrower is free from payment, as it is written [Ex. xxii. 13]: "And if one borrow aught of his neighbor, and it be hurt or die," etc. If, however, he has borrowed a cow, and has borrowed or hired its owner afterwards, and it dies, he is responsible; as it is written [*ibid.*, *ibid.* 13]: "The owner thereof not being with it, he shall surely make it good."

GEMARA: As in the latter part the Mishna states, "if he borrowed the cow afterwards," we may infer that in the first part it means that he has borrowed or hired its owner at the very time that he borrowed the cow. How, then, can there be a case in which the cow is borrowed by being led only, and its owner by words? And if the owner of the cow says to the borrower: "I and my cow are borrowed for your service," *he* is already considered borrowed, but the cow is not considered so until it is led off by the borrower. And so the owner was borrowed *before* the cow? If you wish, we may say that the stipulation was made that the owner shall not be considered borrowed until the leading of the cow takes place; and if you like, it may be said that the cow was already placed in the yard of the borrower, and in such a case leading it off is not necessary. We have learned in the Mishna that "there are four kinds of bailees," etc. Whence do we deduce all this? From what the rabbis taught. The first paragraph [*ibid.*, *ibid.* 6] treats of a gratuitous bailee; the second [*ibid.*, *ibid.* 9] treats of a bailee for hire; the third [13] treats of a borrower.

Says the Gemara: This is correct concerning a borrower, as it is so plainly written [verse 13]. But how do we know that the first and the second paragraph mentioned above are not the reverse? Common sense shows that the second paragraph

means a bailee for hire, as he is responsible for loss and theft. But perhaps the contrary may be said. The first paragraph may mean a bailee for hire, since he is responsible for the double amount if he claims theft. (This is no question.) It is more rigorous to pay the principal amount without an oath than the double amount with an oath. The evidence for this can be inferred from the case of a borrower who has all the benefit without any expense, and nevertheless he pays only the principal amount. But has not the borrower to feed it and also to guard it, consequently he has some expenses? It can be said that the borrower keeps it in a grazing place, which is also secured from thieves; or that he borrows vessels for which he has no expenses at all. It is stated in the same Mishna "that a bailee for hire and a hirer take an oath in case the borrowed thing breaks, is confiscated, or dies, but they pay for loss and theft." This is correct in case of theft, as it is written plainly [*ibid.*, *ibid.* 12]: "But if it be stolen he shall make restitution unto the owner thereof." But whence do we know that the same is the case with loss? Therefore the word "stolen" is repeated * to include loss.

But this would be correct according to him who holds that the Torah does not talk as men talk. (Therefore, as there is a repetition, loss may be deduced.) But according to him who holds that the Torah talks like men, what can be said? It was said in the west that an *a fortiori* conclusion is to be drawn thus: For theft which is almost an accident one must pay; for loss which is almost a neglect, so much the more he must pay. Whence do we deduce that a borrower is responsible for any kind of loss? It is plainly written that he is responsible for anything broken or for death. But how do we know that he is responsible in case of confiscation also? And lest one say that this can be inferred from the case of broken or death, it may be objected that cases could be borne in mind which are not so in case of confiscation. It is from what R. Na'hman said in the following Boraitha: Since it is written in verse 13 [*ibid.*, *ibid.*], "hurt *or* dies," confiscation may be included. But is not the word "or" needed for itself? Because if it were not, one might say that the restitution must be made only if the article be both hurt *and* dead, but not if it were broken only.

* The term in the Scripture is *Ganub yganubh*; literally, stolen, to be stolen. Hence the repetition of the word theft. Leeser, however, translates according to the sense.

Nay, there could be no error, in either case, because common sense dictates that there is no difference to the owner if it were entirely or only half killed. Whence do we deduce that a borrower is responsible for theft or loss? And lest one say that this is to be inferred from the cases of damage or death, then it may be objected that the above cases are different, as they cannot be returned. But in case of theft or loss it can sometimes be returned if he troubles himself. Therefore it must be said that this is deduced from the word "and" in verse 6, which means that what is written above also belongs to this, and also that this corresponds with the above.

It was taught: In case of neglect in the presence of the owner, R. A'ha and Rabuna differ. One makes the borrower responsible, because he holds that a verse can be used only with that matter which was written previously in conjunction with it; and as verse 14 frees the one who has neglected his duty in the presence of its owner, it is not written concerning a gratuitous bailee, which begins with *ibid.*, verse 6 (although the law about neglect is mentioned there, and it is not mentioned concerning a bailee for hire and a borrower); therefore the responsibility of a neglect, just mentioned by the two, is to be deduced by drawing an *a fortiori* conclusion from a gratuitous bailee. However, to free one from the consequences of neglect done in the presence of the owner cannot be deduced, because verse 14, which freed them, does it only on the responsibility mentioned there. And the one who frees him holds that the law of a verse can be used in conjunction with that preceding it and that written before. Consequently, verse 14 refers also to a gratuitous bailee in verse 6.

An objection was raised from our Mishna, which states: "He who has borrowed the cow and the owner at the same time," etc.; but a gratuitous bailee is not mentioned there? (Hence there is an objection to him who says that a gratuitous bailee is free in case of neglect committed in the presence of the owner?)

But even according to your theory is there mentioned in the Mishna a bailee for hire? Therefore we must say that the Mishna teaches only things which are plainly written, but not things which are deduced.

R. Hamnuna said: There is no responsibility when the owner works together with the borrowed article—*e.g.*, when the owner of the borrowed ass works with it, and also when he is present

from the time the article is borrowed until it is broken; but not otherwise. (Says the Gemara:) From this statement it is to be inferred that he interprets verse 14, "that the owner must be with it the whole time." Rabha then objected from the following: "If one has borrowed or hired a cow and its owner at the same time, or borrowed the cow and hired the owner, although the owner did his work at some other place, the borrower is free from payment in case the cow dies." May we not assume that the same is the case even if the owner was engaged with another kind of work? Nay; it means the same work. What, then, is the meaning of "at another place"? *E.g.*, he digs after it the earth which it ploughs to make it ready for seed. But as the latter part of this Boraitha states plainly: "If one hired or borrowed a cow, and thereafter he borrowed or hired its owner, although the latter were engaged with his cow in *the very same work and at the same time*, the borrower is not responsible in case the cow dies." Consequently, the first part must speak of a separate kind of work he was engaged in? It can be explained that both parts of the Boraitha speak of one and the same labor, and by the change of expressions it was intended to add something unexpectedly new in the first part as well as in the last; namely, in the first part, that although he was engaged at another work, the borrower is free in case of the cow's death; and in the latter part, that even if he were working together with his cow there is a responsibility. But can such an explanation hold good? To be unexpectedly new it must be only if the cow were laboring at a separate work, and its owner at another kind of work; but if both are at the same work, it is very easy to be seen that he is free. Aside from this there is another Boraitha which states as follows: Because it is written [Ex. xxii. 14]: "But the owner thereof be with it," etc. Why, then, was there need to state, "the owner not being with it," etc.? Is the first not sufficient? It is only written to teach that if the owner were with it at the time of borrowing, there is no necessity for him to be also with it at the time it dies; however, if he were with it at the time it was dying or breaking, but not at the time it was borrowed, the responsibility remains. And there is also another Boraitha, similar to this, which objects to R. Hamnuna's statement, and so it remains. However Tanaim differ in the interpretation of the Scripture, in the following Boraitha it is written [Lev. xx. 9]: "For every man . . . that curses his father and mother shall be put to death,

that his father and his mother hath he cursed," etc. Now, from this it is known that when he curses both father and mother he is guilty; whence do we know that the same is the case when he cursed only one of them? Therefore the repetition, "his father and his mother," to teach that one of them is sufficient to put him to death. So is the decree of R. Jashia. R. Jonathan, however, maintains that from the repetition one cannot understand more than from the first sentence, as for both it could be explained that the two are meant or only one is meant. However, the law is correct as R. Jashia said, for if the verse would mean both *only*, it would state so plainly.

Abye, who agrees with the theory of R. Jashia, interprets the verses in question in this manner. From the verse [13] it is to be understood that when the owner was not present at both times mentioned above, but if he was present at one of the times only, he (the borrower) is free; and from verse 14 it is understood that when he was present on *both* occasions he is free, but if on *one* occasion only he is responsible. Therefore it must be concluded that if the owner was present at the time the animal was borrowed, there is no necessity for him to be present at the time of its death. But if *vice versa*, there is a responsibility. Rabha, however, agrees with the theory of R. Jonathan, and interprets the verses in question thusly: From verse 13 it may be understood that if he were present at both times, and also if he were only present at one of them, and the same may be understood from verse 14, and therefore we conclude that the law remains as Abye said (although I do not agree with his reasons).

However, whence do we know that the owner's presence at the time of borrowing is the main thing—perhaps the occasion of the accident is the main thing? Common sense shows that the former is the main thing, as this act only brings the article under the control of the borrower. On the contrary, common sense shows that death is the main thing, as a borrower is responsible for an accident? Nay; after all, the first is the main thing, as this act obliges him to feed it. Said R. Ashi: From the expression, "And if a man borrow aught of his neighbor" [*ibid.*, *ibid.*], it is to be inferred that he is responsible only when he borrowed *from* his neighbor, but not if his neighbor is with him. Then the continuation of the above-cited verse and what lollows would be all superfluous? Nay; if not the following,

one may say that such expressions are customary in the Scripture.

Rabina questioned R. Ashi: If one tells his messenger that he shall substitute him in service to his neighbor together with his cow, how is the law if the cow breaks or dies while laboring? Is the word "owner" in the Scripture to be taken so particularly that no one can stand in his stead; or in such a case is the messenger of one considered as if it were himself? Said R. Aha b. R. Iwia to R. Ashi: "Concerning a husband who used the cow of his wife." R. Jonathan and Resh Lakish differ in regard to his responsibility, and concerning a messenger R. Jonathan and R. Ashi differ.

Said R. Eylish to Rabha: If one borrows another's slave and cow, how is the law? This question is to be considered according to the theory of both the Tanaim who differ in the case of the law regarding a messenger, whether he is considered a substitute or not. To the one who holds that he is considered a substitute, the question is the same as is the case with a slave, for the reason that the slave is free from the obligations of the law, and therefore he cannot substitute; on the other hand, according to him who holds that a messenger is not considered a substitute, it may also be questioned if the same is the case with a slave or if the latter is different, as he may be considered as the hand of his master (consequently he may stand for him?). And Rabha answered: "Common sense dictates that the hands of a slave are considered as his master's."

Rami b. Hama questioned: "A husband who uses the estate of his wife, what should he be considered, a borrower or a hirer?" Said Rabha: "Only a man of such genius is fit to make such an ingenious error. What difference is there if he is considered a borrower or a hirer? In both cases it must be considered that the owner of the property is with him; consequently there is no responsibility." The question, however, by Rami bar Hama could be raised in case one has hired a cow of a woman and thereafter married her. If the husband is considered a borrower, then he is not responsible, as the owner of the article borrowed is with him; or if he is considered a hirer, the law of a hirer consequently remains. But what is the difference? Is it not a fact that now the owner of the hired article is with him, and this should supersede the previous act which was without the hirer; as we say the same in case he is considered a borrower?

Therefore, if Rami raised a question it must be thus: If a woman has hired a cow from any one, and afterwards she married, then, in accordance with the rabbis, who hold that the borrower has to pay to the hirer, there is no question, as the owner of the borrowed article is considered to be with him. However, according to R. Jose, who holds that in such a case the cow must be returned to its first owner—now, if after the woman has married, her husband uses the cow and it breaks, what is he considered, a hirer who must pay, or a borrower who is not responsible for an accident in the presence of its owner? Said Rabha: The husband is considered neither a borrower nor a hirer, but (a buyer of the estate of his wife), as said in the First Gate, p. 197.

The schoolmen propounded a question: If the body of the animal becomes lean because of the labor, how is the law? Said one of the rabbis, named R. Hylqia b. R. Ovia: As the schoolmen questioned in case of leanness and not in case of death, they must be sure that in the latter case one is surely responsible. Why, then, has he borrowed it, to put it under a canopy? Said R. Rabha: Not only if it become lean, but even if it dies while laboring, there is no responsibility, for the reasons said above by R. Hylqia.

There was a man who borrowed an axe from his neighbor and it broke, and he came before Rabh, who told him to bring witnesses that he used it as an axe is usually used, and then he would acquit him. (Questioned the Gemara:) But how is it when there are no witnesses? Come and hear! There was one who borrowed an axe and it broke, and Rabh had decided that he must buy him another one. Said R. Kahana and R. Assi to Rabh: "Does the law prescribe so?" Is it not stated (in First Gate, p. 00) that the defendant has only to pay the damage, but not to buy another? And Rabh kept silence. The Halakha, therefore, prevails in accordance with R. Kahana and R. Assi, that he must return the broken one and must give the difference in money.

There was one who borrowed a pitcher and it broke, and R. Papa told him to bring witnesses that he used it as a pitcher is usually used, and he would acquit him. There was a man who borrowed a cat, which had overeaten itself with mice and died, and R. Ashi, before whom the case was brought, was deliberating (whether this is considered a case in which it dies while laboring or not). Said R. Mordecai to him: "So said Abimi

of Hagrunia, that a man whom a woman has killed must not be taken into consideration." *

Rabha said: "If one wants to borrow something from his neighbor, and so that he shall not be held responsible if it be damaged, he may say to the borrower: You may give me water to drink (*i.e.*, that the giving of water will be considered a labor, so that he borrowed the article with its owner). However, if the lender is clever, he may say to him: First borrow what you need, and afterwards I will give you the water."

Said Rabha: A teacher who teaches infants, a planter, a butcher, a barber, and the scribe of the city—all these, when they do their work, are considered, in case one borrows an article from them, as if he has borrowed also the owner of it.

Said the rabbis of Rabha's college to Rabha: "According to your theory you, master, are borrowed to us" (*i.e.*, that if we were to borrow something from you and should spoil it we should be free from payment). And Rabha became angry, saying: "You want to benefit yourselves with my money? On the contrary, you, as my disciples, are borrowed to me, since I have the right to engage you in any tract of the Talmud I like, and you have no right to prevent me or refuse to study what I explain to you." (Says the Gemara: In reality it is not so.) In the days before the festivals he is borrowed to them, as then he must teach the laws of the coming festivals; they (the disciples), however, are borrowed to him on all other days

It happened that Maraimar b. Hanina hired mules from Huzai, and the former overworked them and they died; Rabha made him responsible. Said the rabbis to Rabha: "Was it not a neglect in the presence of the owner, and Huzai used to support them in their work? Rabha was embarrassed; finally it was learned that Huzai was not supporting them in their labor, but, on the contrary, was there to see that they were not overloaded. (Consequently Rabha was right in his decision.) This is correct in accordance with him who holds that a neglect in the presence of the owner is to be freed, but there is one who holds that in such a case the borrower is not free. Why, then, the embarrassment? (He may have agreed with the latter.) The case was that the mules were stolen, and died in the house of the thief; and when Rabha made him responsible the rabbis

* This is an ancient parable, and it means that such carelessness must not be considered

questioned him: "Was it not stolen in the presence of the owner? Why, then, should Maraimar be responsible for the theft?" And therefore Rabha was embarrassed. Finally, it was learned that Huzai came only to see that they should not be overloaded.

MISHNA *II.:* If one borrowed a cow for a half a day, and for the other half a day he hires it, or he borrows it for to-day and hires it for to-morrow, or there were two of them, one of which he borrowed and the other he hired, and it dies, the lender claims that it dies in the time for which it was borrowed, and the borrower says, "I don't know," then the latter is responsible. If the reverse, the hirer says: "It dies while laboring when it was hired," and the owner says, "I don't know," then the former is free. If, however, they contradict each other, and one says that it died while borrowed, and the other says it died while hired, then the hirer has to take an oath that it is as he said, and he is acquitted. But if both say they don't know how the case was, then the damage is divided.

GEMARA: From this statement it is to be understood that if one claims a mana, and the defendant says, "I don't know," he must pay. Shall we assume this should be an objection, as it was taught that R. Na'hman and R. Johanan hold the defendant free in such a case? R. Huna and R. Jehudah hold him responsible (the reason of R. Na'hman's statement is, as R. Ashi explains, because the plaintiff cannot collect any money without evidence; and therefore the money remains with the defendant, in accordance with the law of hazakah). Nay; as R. Na'hman said elsewhere that this is only in case the defendant has to take an oath (the illustration will follow further on). The same can be explained in the case in our Mishna. How was the case? Rabha illustrates it thus: If one claims a mana, and the defendant says, "I am sure of fifty zuz, but not of a hundred," then as he cannot take an oath he must pay. However, in the cases brought in our Mishna, such a case can be found in the first part, when there were two cows. The plaintiff claims, "I have forwarded to you two cows for one day, a half of it as a loan and the other half as a hire, or for two days, one day as a loan and the other as a hire," and both die in the time for which they were borrowed. The defendant claims, "I am sure that one of them died in the time of borrowing, but I am not sure of the other one," and as he cannot swear, he must pay. The second part is to be explained that there were three cows, and the

plaintiff claims that two of them died in the time for which they were borrowed The defendant claims that he is sure only of one of them, and as to the others, he does not know whether that which was borrowed died, and that which is still alive is the one which was hired, or *vice versa*. As he cannot swear, he must pay. And according to Rami bar Hama, who holds that all the four kinds of bailees are liable only when they admit a part and deny a part, the first part of the Mishna is to be explained that the claim was for three cows for half a day, or a day as a loan and the other as a hire; and the plaintiff claims that all the three died at the time when they were borrowed. The defendant, however, denies one of them altogether, and for the remainder he claims that only one of them died in the time for which it was borrowed, and concerning the other, he is doubtful; and in the second part the plaintiff claims that he has given him four cows: three of them as a loan and the one as a hire, and the three which were borrowed died. The defendant denies one altogether, and admits that one died in the time for which it was borrowed, and as to the remainder he is doubtful. As he cannot take an oath, he must pay.

One says it died while borrowed, etc. But why? In the claim of the defendant we do not see any admission, even in part, as to the claim of the plaintiff (since the plaintiff claims that that which was borrowed died, and the defendant says that it is still alive, but that the other which was hired is dead; consequently he is not obliged to take an oath at all. Said Ula: As the defendant must take an oath that the cow in question died a natural death, the plaintiff may desire that in that oath shall be included a statement that the hired cow, and not the borrowed one, died (such a desire must be listened to, as it is explained elsewhere that this is a biblical law).

But if both say they don't know, etc. This statement is in accordance with Symachos, who holds that doubtful money must always be divided.

MISHNA *III.:* If one has borrowed a cow, and the owner sends it to him by his son, slave, or messenger, or even by the same persons of the borrower, and it dies while on the road, the borrower is free. If, however, the borrower orders him to send it through his son, slave, or messenger, or even through the same persons of the owner, or even if the owner says to him, "I will send it through the persons mentioned above, of my own or of yours," and the borrower says, "Do so," then the

borrower is responsible for the death while on the road, and the same is the case with the return.

GEMARA: Was it not said above that the hand of a slave is considered as the owner's? Why, then, should the borrower be responsible if it was sent with the slave of the owner? Said Samuel: It treats of a Jewish bondman, whose body does not belong to the owner. Rabh, however, said: The Mishna can be explained that it treats even of a heathen bondman; but the order of the borrower is to be considered, as if he would say: Strike it with a stick and it will come to me.* As the borrower told him to send it in that manner, his intention was that as soon as he shall forward it to the above-mentioned persons, the control of the owner ceases.

An objection was raised from the following: If one borrows a cow and it was sent to him with the son of the owner, or with his messenger (with the consent of the borrower), the borrower is responsible for an accident on the road. If, however, it was sent by his slave, he is free. Now this would be correct in accordance with Samuel's theory, as the Boraitha may treat of a heathen slave, and our Mishna of a Jewish one; but according to Rabh's theory it contradicts? Say, then, Rabh explained the case of the Mishna, that the borrower is not as explained above, "it is considered," but Rabh says that the Mishna treats of which it was said plainly, "Strike it with a stick and it will come to me." As it was taught: "Lend me your cow. Through whom shall I send it to you? Strike it with a stick and it will come." Said R. Na'hman in the name of Rabba bar Abuhu, quoting Rabh: As soon as it was out of the control of the owner the borrower is responsible for an accident.

There is a Boraitha which states plainly, as it is above, in the name of Rabh. Shall we assume that it shall be a support to him? Said R. Ashi: Nay; as the Boraitha may treat in case that the courtyard of the borrower was behind that of the owner, so that the borrower was sure that if the owner would strike the animal with a stick, while turning it to the yard of the borrower, it will come to it (but not otherwise). But is not such a case self-evident? The case was that there was another corner in

* His reason is that the slave who was appointed for this message is to be considered hired, as his master has a right to hire him out, and therefore it is as if he hired out two cows. And the statement above, that the hand of the slave is considered as that of his master's, holds good only when the master himself lends or hires. Then the slave may substitute for him, but not otherwise.

the yard of the owner, and the animal could turn there while running. Lest one say that in such a case the borrower was not sure, it is necessary to teach us that he was.

R. Huna said: "If one borrows a hatchet, if he has done some work with it he acquires title to it for the time borrowed, but not otherwise." (According to his theory drawing does not give title to a bailee.) To what purpose was this stated? Did he mean to say that he is not responsible for an accident? Why should this case be different from the case of the cow mentioned above? He meant to say that the owner has the right to retract as long as the borrower has not used it, but not after he has. And he differs with R. Elazar, who said that at the same time the enactment of drawing was made concerning buyers, it was also enacted concerning bailees, and so also we have learned in a Boraitha, with the addition that as real estate may be bought with money, with a note, and with hazakah, the same is the case with hiring. With hiring! What has a note and a hazakah to do with hiring? Said R. Hisda: When real estate is hired (*e.g.*, if one hires a house, if he has paid the rent, or has given a note, or taken possession, hazakah, of it) the owner has no right to retract.

Samuel said: If one steals a bunch of pressed dates, which contains fifty dates—and usually when they are sold together a bunch contains only forty-nine, but if single he sells out the whole fifty—then, when the robber repents and wants to make amends, if the dates belong to a common man he has to repay only for forty-nine, but if they belong to the sanctuary, he must repay fifty, with the addition of a fifth part. However, if one spoils the same, he is free from the additional fifth part; as the master said elsewhere: It is written [Lev. xxii. 14]: "If a man *eat* a holy thing unwittingly," etc.; it excludes if he spoiled it.

R. Bibi bar Abye opposed: Why shall he pay to a common man only forty-nine? Let the owner say: I would sell them singly. Said R. Huna bar Jehoshua: There is a Mishna (in the First Gate, p. 131): "It is appraised at how much the measure of the land required for planting a saah was worth before, and how much it is worth after."

Hence we do not appraise the value of that which was consumed, but of that which was diminished. Shall we assume that Samuel holds that the law concerning an ordinary man is not equal to that of the sanctuary? Are we not aware that elsewhere R. Abuhu, in the name of Samuel, declares that there

is no difference? Samuel had retracted that statement. But how do you know that Samuel retracted from *that* statement? Perhaps he had retracted from *this* statement. We are aware of this from Rabha's following statement: "That if some one took something from the sanctuary unintentionally or by an error, he transgresses, as if he did the same from an ordinary man intentionally." (Hence we see that there is a difference between a sanctuary and ordinary goods, and Rabha would not teach such a law if it were against Samuel.) Rabha said: Carriers who break a barrel of wine, the price of which on a market day is five zuz and on an ordinary one four, on the market day they have to return another barrel of wine, but on another they have to pay in cash four zuz. This, however, is said if the wine dealer has no other wine for sale. But if he has other wine, and he does not sell it, they may return him a barrel of wine, as we see that he intends to keep the wine for the season; and also in case they pay him, he has to deduct the money for their labor, and also what he has to pay for making a hole in the barrel (which was of clay).

MISHNA *IV.:* If one exchanged an ass for a cow, and it brought forth young ones, or one has sold one's female slave and she gives birth, and the seller claims that this happened before the sale, and the buyer thereafter, the value of it is to be divided. If one possesses two male slaves, a large one and a small one, or two fields, one large and one small, and the buyer claims, I bought the large one, and the seller, I doubt it, the buyer's is to be considered. If the seller claims: I sold the small one, and the buyer doubts it, the claim of the seller must be considered. If, however, they contradict each other, the seller must take an oath that he has sold the smaller one; if both doubt it, the difference is to be divided.

GEMARA: Why should it be divided? Let us see who possesses it. It should be the obligation of the plaintiff to bring evidence. Said R. Hyya bar Abba in the name of Samuel: The Mishna says: When the articles in question are still in the *semita* (a corner near a public thoroughfare where articles for sale are placed). But why should it not be considered still under the control of the owner, and the buyer the plaintiff who should have to bring evidence? The Mishna is in accordance with Symachos, who said that doubtful money ought to be divided without a note. But was Symachos's decision in a case where both claim that they are certain? Symachos's decision was

only in cases where both doubted. Said Rabba b. R. Huna: Yea, Symachos made his decision, even in a case where both claim certainty. Rabh, however, said: Symachos's decision was only when both claimed that they are doubtful, but not when both claimed certainty. But the Mishna is to be corrected, that both of them claimed that they were doubtful; and therefore the article in question must be divided. However, the Mishna is correct only with Rabh's correction, because part of it speaks plainly in case both are in doubt. Therefore the first part must also be interpreted in the same way. But according to Rabba bar R. Huna's theory, who says that Symachos's decision was even when both claim certainty, the last part would be entirely superfluous, since even when they claim certainty it is to be divided. Is it so much the more when both claim doubt? Nay; this cannot affect, as it may be said that the last part was taught only to make clear the meaning of the first part; lest one say that it speaks only when they both claim doubt. Therefore it teaches plainly the claims of doubt in the last part to signify that the first part speaks when both claims were of certainty, and nevertheless it must be divided. An objection was raised from the decision in our Mishna that the seller must take an oath that he has sold the smaller one, and this is correct only in accordance with Rabha, who says that Symachos's decision does not apply to a case of certainty. But, according to Rabba bar R. Huna's theory, it does. Why, then, should he take an oath; let them divide?

Symachos admits that in such a case where the oath is to be taken biblically, the law that it should be divided does not exist, as will be explained further on.

If one possesses two slaves, etc. What has an oath to do here? In the claim of the defendant we do not see any admission at all, as the plaintiff claims that he sold another person, which the defendant does not contradict; and, secondly, the seller says: "Here is your bought article; take it." Such a case is not considered a part admission, as said above; and aside from this there is no rule that no oath must be given concerning slaves. Said Rabh: It treats when he demands the value of the articles sold, but not themselves, as, *e.g.*, the value of the slave or the field in question. Samuel, however, says: The Mishna treats concerning the garments of a slave and the sheaves of a field; the seller claims: I sold you the smaller ones; the buyer says: The larger ones. But then the claims are

not of one and the same article, and the axiom, There is no admission by the defendant, mentioned above, applies also to this. As Rabh Papa declares elsewhere that it speaks not of a ready-made garment, but of the stuff to a garment, which is still attached, and one claims: You have sold me measure for a large garment, and the other says: For a small one, the same is to be explained here.

It was difficult for R. Hoshea to accept this explanation, as the Mishna states a slave, and not a garment. Therefore he tried to explain thus—that the Mishna treats that the plaintiff claims that he sold him a slave with his garments or a field with its sheaves. And to the objection that there is no admission at all to the claim of the plaintiff that he has sold him a garment with the slave, the explanation of R. Papa mentioned above may be used here also, that the dress was attached to the slave (*i.e.*, that he was dressed in it); and as an oath has to be given to him for the dress, the oath about the slave may also be included.

It was difficult for R. Shesheth to accept this explanation, as according to it the main thing the Mishna teaches is that the oath for encumbered estate, for which an oath is not given when the claim is only about it, is nevertheless to be included in the oath given for unencumbered estate; and this is plainly stated in several places elsewhere. This, however, presents no difficulty, since, lest one say that the garment which the slave wears is equal to himself, or the sheaves of the field which are still attached to it are equal to the field, it comes to teach us that it is not so.

If both doubt it, etc. This is certainly in accordance with Symachos's theory, who says that doubtful money is to be divided. How, then, is the second part to be explained, which states that if the seller claims that it was born under his control, the seller must swear that so it was? Did not Rabba bar R. Huna declare above that Symachos's theory applies also to the claims of a certainty? Why, then, an oath? Let them divide in this case also. Symachos admits that in such a case, where the oath is to be taken biblically, the law that it should be divided does not exist. As Rabha explained that it treats of a case in which he has cut off a woman's hand, and of a field in which he has digged pits, excavations, and caves, to which the theory, "Here they are," does not apply, as it is not acceptable. Concerning the admission in

part, it may be considered that her hand is considered a part of her.*

MISHNA *V.:* If one sold out his olive trees for fuel, and there were still bad olives on them, the oil of which was less than a quarter of a lug from the measure of a saah, they belong to the buyer. If, however, there was such a quantity or more, the buyer claims it is produced from his trees, and the seller claims it was produced from his estate, the products are to be divided.

Olive trees which were overflooded (by a stream), taken out by the owner, and planted in another's field, and the two quarrel about the fruit borne: one claims, My trees, and the other, My ground brought it. It is to be divided.

GEMARA: Let us see how the case was. If the seller told the buyer to cut it off immediately, and he didn't, then even if there was less than that quantity, it belongs to the seller. If he told him: You can cut it off whenever you like, then, even if it was more, it belongs to the buyer. The case was that he sold it without any stipulation; then less than a quarter of a lug people do not care about. But when more than this, they do. Said R. Simeon b. Paze: The quarter in question must be measured after what is lost in pressing it.

Olive trees which were overflooded, etc. Said Ula, in the name of Resh Lakish: The law holds good only when they were torn out with lumps of earth in which they were planted. (In such a case the trees in question are free from the law Arlah; that is, the first three years) and even then only when three years have elapsed from the time he had planted them in the other field. Otherwise the fruit belongs to the owner of the trees; as he may say to the owner of the estate: If you, *e.g.*, would plant new trees you could not use them in the first three years, as they would be Arlah. But why should not the owner of the estate claim: "If I should do as you say, I would use all of them after the lapse of three years, and now you take half of it." Therefore we must accept, as Rabin has reported that Resh Lakish said, thus: The law holds good when they were torn out with the lumps of earth and during the first three years, but after the lapse of three years all of them belong to the owner of the

* The text is so complicated that it is very difficult to understand the real meaning of it. The Achri has omitted this from his compendium; the commentaries also have tried to explain this, but did not succeed. However, according to our method we could not omit this, so we did the best we could to translate it.

estate, because of the reason stated above. But why should not the owner of the trees claim: If you should plant it you would not use it for three years, and now you consume half of it every year? Because the owner of the estate may answer: If I were to plant it, they would be small and would not afford much, so that I could use the ground near them for vegetables (which need sunshine), which is not the case now, as you planted your trees in that place.

There is a Boraitha: If the owner of the trees says, "I will take back my plant from your field," he must not be listened to (although after three years it will all belong to the other one), but the owner of the estate has to pay the value of trees for planting, and not the value for fuel. Why so? Said R. Johanan: Because of the occupancy of the land of Israel. Said R. Jeremiah: To such an explanation we need such an authority as R. Johanan.

It was taught: If one has planted trees in a field belonging to another, without the consent of the owner. Said Rabh: His word must be appraised, but not to his benefit (*i.e.*, if the expenses were more than the improvement, he gets nothing, and if the improvement was worth more, then he gets paid for the improvement). Samuel, however, maintains that the appraisement should be as much as one has to pay for planting such a field. And R. Papa said: They (*i.e.*, Rabh and Samuel) do not differ, as one speaks of a field which is better for trees and the other of that which is better for vegetables. And the statement of Rabh was not heard from him plainly, but was so inferred from the following: There was a man who came to Rabh with such a complaint, and he told him to appraise his work. He objected, saying, I do not want my field to be planted at all, and Rabh said: Go and appraise his work, not to his benefit. And the man said: I don't want to do even that, as he spoilt my field. Thereafter it was learned that the owner of the field had fenced it, and Rabh said: From this we see that his work satisfies you; go and appraise his work so that he may be benefited.

It was taught: "If one has rebuilt a ruin of one's neighbor without his consent, and to the owner's claim has said: I will take back my wood and stones," R. Na'hman is of the opinion that he must be listened to, and R. Shesheth maintains that he must not. An objection was raised. R. Simeon b. Gamaliel said that in such a case the Beth Shamai hold that he should

be listened to, and the Beth Hillel say not. Shall we assume that R. Na'hman holds in accordance with the Beth Shamai? R. Na'hman holds with the Tana of the following Boraitha: In such a case his claim should be taken into consideration; so is the decree of R. Simeon b. Eliezar. But R. Simeon b. Gamaliel said that so was the decree of the Beth Shamai. The Beth Hillel's verdict, however, is contrary. How, then, should the law be decided? Said R. Jacob in the name of R. Johanan: If this happened with a house, his claim may be considered, but not with a field—for the reason the earth became deficient.

MISHNA *VI.:* If one rents a house (without appointing the time) in the rain season, he has no right to make the tenant move from the Feast of Tabernacles until Passover; and in the summer season for a period of thirty days. In the large cities, however, there is no difference at what time; he must keep him twelve months; and the same is the case with stores or shops at any place. R. Simeon b. Gamaliel maintains that the term of the shops of bakers and dyers is three years.

GEMARA (Let us see): In the rain season why must he keep him for the whole season? Because usually when a man rents a house it is for the whole season. Why should not the same be said of the summer season? And if you should say that the reason is that because during the rain season it is not easy to find a house to rent, then how is it that in the large cities the term is fixed for twelve months? Now if the twelve months terminate in the rain season, and the owner makes the tenant move, why it is not easy to find a house for rent? Said R. Jehudah: All the terms are fixed only for giving notice; *i.e.*, thus: If one lends a house to some one anonymously, one cannot make the tenant move from the Feast of Tabernacles until Passover, unless one had given him notice thirty days before. And so, also, we have learned in the following Boraitha: The terms thirty days and twelve months are for giving notice; and this notice is to be given by the owner of the house as well as by the tenant, as the owner may say, If you had given me notice, I should have troubled myself to find a man who would have taken it for the whole season. Said R. Assi: If he has dwelt even only one day in the rain season, the owner loses the right to make him move until Passover. But was not thirty days the term? He means to say if one day of the thirty days in question had passed without any protest of the owner. Said R. Huna: The owner, however, has the right to increase the

rent. Said R. Na'hman to him: This would be if he would hold him (χεβιοις*) (in his pocket) until the tenant would lose his last garment. (Rejoined R. Huna:) I mean if the rent in general becomes dearer. It is certain, if the house of the owner where he dwells falls, he may make the tenant remove from that house (if the term is at an end) even without a notice before, as he may say, You are not better than myself, as I also cannot so easily find a house, and I was not aware that my house will fall. If the tenant sold out his lease, loaned, or made it a present, the same may be done, as the owner may say, You are not better than the man from whom you took it. If, however, the tenant has given it for the wedding of his son, then it must be investigated; if it was possible for the owner to notify him, he should do so; and if not, he may say, You are not better than myself.

There was a man who bought a lot of wine and couldn't find a place to keep it in, and he asked a certain woman if she had a place for hire; and she said no. Then he betrothed her and she gave him a place. He went home, wrote a divorce, and sent it to her. She then took carriers, paid them with the same wine for taking it out, and put it in the street. When the case was brought before R. Huna b. R. Jehoshua, he said: As he has done, so it was done to him; he was rightly rewarded, and not only from a yard which was not for rent she had the right to do so, but even if it was for rent, as she may say I would like to let it to some one, but not to you, as you are in my estimation equal to a spy.

R. Simeon b. Gamaliel maintains, etc. A Boraitha states that the reason is because they usually give very much of their goods in debt to the people in the neighborhood.

MISHNA *VII.:* The owner of the house is obliged to give to the tenant a door bolt, a lock, and all other things belonging to the house which is to be done by a specialist. However, the things which can be done by any one the tenant has to furnish himself. The manure of the house belongs to the owner; the tenant has a right only to the ashes which he takes out from the ovens.

GEMARA: The rabbis taught: The owner of the house is obliged to put in doors, to open windows, to repair the ceiling,

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* We have translated according to Schoenhack's Dictionary. Rashi, however, explains it differently, which is not translatable; the meaning, however, is the same.

and to support it with a beam; and the tenant is obliged to make for himself a ladder, a battlement, a gutter, and to plaster the roof with clay.

R. Shesheth was questioned: Whose duty is it to furnish a Mezuzah ?* But did not R. Mesharshia say that the obligation is the tenant's ? The question was that if the door-post was of stone, whose is it to furnish a place for the Mezuzah ? And R. Shesheth answered thus: We have learned in our Mishna, which states that things which need not a specialist the tenant must prepare; and this is also to be considered among these things as he can fix it himself.

The rabbis taught: The tenant has to buy a Mezuzah, but when he removes he must not take it with him, unless he is aware that a Gentile will occupy the house after him. And it happened that one took it out while removing, and buried his wife and two children.

The manure belongs to the owner, etc. How is the case if the cattle were the tenant's ? Why, then, should the manure belong to the owner of the house ? And if the yard was not rented to him, and the cattle belong to the owner, then it is self-evident that it belongs to him ? The court was not rented, and the manure was not of the owner's cattle, but of cattle which were in the court to load or unload things belonging to the tenant. And this statement may be a support to R. Jose bar Hanina, who said that a courtyard acquires title for its owner even without his knowledge. An objection was raised from the following: If one said all articles found in my courtyard to-day, it shall give title to me. He said nothing. Now if the theory of R. Jose is correct, why should his words be disregarded ? It speaks of an open court where the articles are not secure. If so, how is to be understood the latter part of the same Boraitha, which states: If, however, there was heard a voice in the city that in the yard of so and so is found an article (Rashi explains this as, *e.g.*, that it was heard in the city that a lame ram happened to come to his field, or that the river overflowed and left some fish in his yard) his word is to be considered. Now, if it speaks of a court where the things are not secure, why should his word be considered, even in this case ? If such a thing was heard in the city, one would not dare to take it, and therefore it is considered as if the yard were secured.

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* The "amulet" for the door-post (Deuteronomy, vi. 9).

Another objection was raised from the following: Ashes of the ovens and dust from the air belong to the tenant, but that from the stable and in the yard belongs to the owner. Now if the theory said above by R. Jose is correct, why should dust of the air belong to the tenant? Is it not the air of the owner's court? Said Rabha: Air which cannot reach the ground because of some obstacle must not be considered as if it were on the ground. But was the decision certain to him? Did not he himself question as follows: If one has renounced his ownership of a purse of money, and has thrown it into one open door, and it passes out through another open door, and falls outside of the house, did the contact of the purse with the air of the house in its passage through give title to the purse to the owner of the house, or, because it has not rested in the house, has the house-owner no title? (Now if he were certain in his above decision, he would not ask such a question?) In the case questioned by him there was no obstacle, as in the case mentioned above.

That which is in the stable and in the yard, etc. Why both? Is not one sufficient, as it speaks of a yard which was not rented to the tenant? Said Abye: It means to say that even if the courtyard was rented, still that which is in the stable belongs to the owner. And R. Ashi said: From this it may be inferred that if the yard was rented without any stipulation, the stable in it is not to be considered included.

MISHNA *VIII.:* If the year was made a leap-year, the tenant reaps the benefit of the intercalation. However, if he rented him the house monthly, the intercalation belongs to the owner. It happened in Ciphorius, that one rented a bath-house for twelve golden dinars a year. The payment should be one dinar monthly, and thereafter the year was made leap intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment of intercalation shall be divided.

GEMARA: Does the Mishna bring a fact to contradict its previous statement? (As there is no mention of a division, but belongs either to one or to the other.) The Mishna is not completed, and should read thus: If he has rented it to him for twelve months to be paid monthly, then the payment for the added month is to be divided, and it happened also in Ciphorius, etc.

Said Rabh: If I were there I would decide that this month belongs altogether to the owner. What was the intention of Rabh to teach us? That the last expression must be consid-

ered. Has he not taught the same elsewhere; namely, R. Huna said that in the school of Rabh it was taught that if one says I sell you this article for an istera (hundred mahas), then he has to pay him a hundred mahas in good money, and if *vice versa* he may give him an istera? (The difference between an istera and a hundred mahas is that an istera contains also a hundred mahas, but not in current money.) From that statement we can infer nothing, as one may say that the last expression was only an explanation to the preceding one. (In our case, however, there is no explanation. The owner rented the tenant the house for a year for twelve golden dinars. The payment should be a dinar monthly; consequently it was two conditions, and not an explanation.) Samuel, however, said: The decision was so made because they came to the court in the middle of the month, but if they had appeared in the beginning it would be entirely the owner's; and if they would come in the end of the month, it would be the renter's (because they doubted as to which expression should be considered, the first or the last; and if they came in the beginning of the month, and he required payment or removal, then his claim is to be considered, since the house is his. And if they came at the end of the month, there is no claim for removal, but for the past month. Such a debt cannot be collected by the court, and therefore the money remains with the renter. But if they came in the middle of the month, and the owner demands payment or removal, he is to be paid for the future, but not for the time past.

But did not Samuel also hold that the last expression must be considered? Is it not stated elsewhere: If one said, I sell you a kur of wheat for thirty salahs, the seller may retract even at the last saah, because the buyer does not acquire title until he has taken the last one (and he had sold him the whole kur and not every saah separately). If, however, the seller said, I sell you a kur for thirty salahs, each saah for a salah, then he cannot retract from that which was already measured (as the last expression, one saah for a salah, is the one taken into consideration). So said both Rabh and Samuel. (Hence we see that Samuel also agrees to the theory of the last expression.) Nay, the reason in that case was, because he took possession of it already, and in our case also for the same reason that it is doubtful, whether the first or the last expression is to be considered. He does not pay for the time occupied, but for the future. R. Na'hman, however, maintains that the estate is

always considered in the occupancy of the owner, and therefore there is no difference at what time in the month they came to the court. His rent must be paid; and not only when the last expression was a salah a month, but even if it was the reverse, a "salah a month, twelve for a year."

R. Janai was questioned: If the renter says I have paid, and the owner claims I have not received it, who of them must bring evidence? (Let us see.) The following Mishna in (Tract B'khorad) answers this question: Either it was for time past or for the present, namely: If the father dies within thirty days of his first-born son's birth, he must be considered unredeemed as yet (*i.e.*, when he is grown up, then the obligation of redeeming would remain to him all his life). If, however, his father dies after thirty days, he is to be considered redeemed, unless neighbors assure him that he was not. (From which it is inferred that within the time the renter must bring evidence, and after the time the owner must bring evidence, as according to the Jewish law rent is paid at the end of the month.) The question was, at the very same day when the term is ended, the renter says I paid you in the morning, and the owner says you did not. Said R. Johanan to them: This we have learned in the following Mishna: A laborer who claims in the last day of his employment, that he did not receive as yet his salary has to take an oath and collect the money. And that the laborer must take an oath and not the employer is enacted by the rabbis only there; as the employer has to deal with many laborers, it may happen that he has given to another one instead, and then he will swear falsely; but in your case the renter is trusted, if he takes an oath that he has paid.

Rabha in the name of R. Na'hman said: If one has rented out a house for ten years, and has signed a lease without a date, and thereafter he claimed that the tenant has already had the house for five years, he is to be trusted. Said R. A'ha of Difti to Rabina: According to this theory, if one has loaned a hundred zuz and has taken a note, should the debtor also be trusted if he says, I have paid you the half? And he answered: What a comparison is this? A note is written for collection; and if he would pay, he would insist that it should be written on the note or he would take receipt. In this case, however, the owner may claim that he has made the lease, so that the tenant shall not be able afterwards to claim hazaka (occupancy).

R. Na'hman said: If one borrows at his neighbor's an article

for the time it may be fit for work, he may take it as often as he requires it as long as it exists. Said R. Mari, the son of Samuel's daughter: This holds good only if it was done with the ceremony of a sudarium. And R. Mari b. R. Ashi said: That in case it breaks, he is obliged to return him the pieces, as it was only borrowed, but not sold.

Rabha said: If one borrows a hoe to dig this vineyard, he may dig with it the whole vineyard. If he says *a* vineyard, it may be any vineyard he likes, and if he says *vineyards*, then he may dig as many as he possesses, and if it breaks he must return the pieces.

R. Papa said: If one says lend me this well, and it becomes ruined, the borrower has no right to rebuild it. If, however, he said *a* well, if it becomes spoilt, the borrower may rebuild it. If, however, he said to him, Allow me your estate to dig a well, he may dig at any place in it until he finds water. However, all this holds good only with the ceremony of a sudarium.

MISHNA *IX.:* If a man rents out a house and it falls he must build another house in the same condition as the first was; if it was a small one, he must not build it larger, and *vice versa*. If it was two houses he must not make one, and *vice versa;* he must not increase or decrease the number of windows, unless the renter agrees.

GEMARA (How was the case): If the owner rented him *this house*, then why should he build another one when it falls; and if he rented him anonymously a house, then why can he not make any change in the building, *e.g.*, two or one, or a large instead of a small? When Rabin came from Palestine he said, in the name of Resh Lakish, that the Mishna treats: When the owner said to the tenant, I rent out to you a house like this. If so, what does the Mishna teach us? Is this not self-evident? The case was if the house was standing on a shore of a river, and lest one say, that it means a house which is placed in the same position, therefore the statement of the Mishna.

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE HIRING OF FIELDS; PAYMENT OUT OF THEIR PRODUCTS OR IN MONEY; THE NEGLECT OF THE HIRER; WHAT HE MAY OR MAY NOT SOW IN THEM.

MISHNA *I.:* If one hires a field (no matter under what condition, for a half, third, or a quarter, or for so and so many kurs a year) he must do as it is customary in that country: to scythe, to turn it out, or to plough, to weed after them. (When they come to divide) the grain, they have also to divide the hay and straw. If the stipulation was made on wine, then they divide the vine and sticks. They must also prepare together the sticks needed for the vineyard for the next year.

GEMARA: There is a Boraitha: If the custom was to scythe, he must not tear out, as the owner of the estate may say it is better for me that some of the straw remains, which will serve me to prepare manure next year. Or if the custom was to tear it out, he must not scythe, although one might say I would like the garden to be clean, and the other says, I would like to have the straw of it, and the reason is because each of them has a right to prevent the other.

To weed after them he may. Is not this self-evident? The case was in such a place where the custom was not to weed, and he, however, did so while still growing, saying, I do so now in order that I shall not have to do it after the grain is taken off. It teaches us that such a stipulation is not to be considered.

All must be done according, etc. What does it mean to include in the word "all"? That what the rabbis taught: Where it was customary to let the trees with the earth he may do so, and in the places where it is not customary he must not do so. Is this not self-evident? The case was in places where it was customary to let it for a third of the products, and he let it for a quarter, lest one say that the owner may say, I have reduced the price for the purpose of saving the trees for myself. It comes to teach us that this cannot be done unless so stipulated.

Where it is customary not to let it, etc. Is this not self-evi-

dent? The case was in places where it was customary to let for a quarter, and he took it for a third, lest one say that the hirer may claim, I have increased the price for the purpose that you should give it to me with the trees. It comes to teach us that this cannot be done unless so stipulated.

R. Joseph said: In Babylonia there is a custom that the gardener is not given any straw. To what purpose does he say this? Because if it happened that some are doing so, it shall not be considered as a custom, but attributed to their goodness. The same said again: The first earth upon the trench, the second, and the third, and also the sticks for the thorns must be furnished by the owner; the thorns themselves, however, by the gardener. This is the rule. All things which are considered the most necessary for preserving the garden must be furnished by the owner, but extraordinary things by the gardener. (As this benefits him only as this saves him time and trouble.) He said again: The hoe, the dung-fork, the pail, and the bag for water is to be furnished by the owner; the gardener, however, has to dig the channels for water.

As they divide the wine, etc. What have sticks to do here? In the school of R. Janai it was said, *i.e.:* The peeled sticks on which the vine is usually supported.

They must also, etc. Wherefore this addition? This corresponds to the former, and it means thus: Why should the sticks be divided? Because the preparation of them is to be done by both.

MISHNA *II.:* If one hires a field and it was a dry place (so that it has to be artificially watered), or a group of trees and thereafter the spring ceased to flow, or the trees were cut off, the hirer has no right to deduct from the price stipulated. If, however, at the time hired the hirer said to him: Rent me *this* dry field, or this field in which there are a group of trees, and it happened that the spring dried up or the trees were cut off, the right of deduction is granted.

GEMARA: How was the case? If the general river from which all water their fields become dry, why then shall nothing be deducted from the agreement; let him claim that this is a plague to the whole country (further on it is taught that in such a case the hirer may deduct)? Said R. Papa: *I.e.*, that the channel from the river to the field only became dry, and then the owner of the field may say, you could water it by means of pails. R. Papa said again: The statement of the two Mish-

nayoths applies to both cases, either he took it in partnership for half or third of the product, or he hires for a certain amount of kurs. The statement of the following Mishnayoths of this chapter, however, are different, as the law which applies to an undertaking for half of the products does not apply to a hiring and *vice versa*, as it will be explained further on.

If the hirer said to him: Rent me this dry field, etc. But why? Let him say, I only gave you the name without any particular intention; have we not learned in the following Boraitha that if one says, I sell you the estate which contains a kur of earth, and there is no more than a half, or, I sell you a vineyard and there are no vines, or, I sell you a fruit-yard, and there are nothing but pomegranates, all these sales are valid as they are so called. And the same should be the case here. Said Samuel: This presents no difficulty, as in all cases of the Boraitha the owner says it to the buyer, therefore the name is considered. From the case stated in our Mishna, however, we see that he wanted that particular field upon which he was then standing, as he said *this*. Rabina, however, said: It does not matter who says so, the case in the Mishna is different, because in spite of the fact that he mentions *this*, of which it is to be inferred that he was standing upon, he nevertheless mentioned dry field also, which shows that only that particular dry field suits him, because of the circumstances.

MISHNA *III.:* If one has undertaken to work up a field, and he has neglected to do so, it must be appraised at how much it would produce if worked, and the defaulter has to pay, as it is customary for an agreement to be so written, that should it be neglected, I will pay from my best estate.

GEMARA: R. Mair, R. Jehuda, Hillel the first, R. Jehoshua b. Kar'ha, and R. Jose, all these considered the language of the common people legal (although it was not in accordance with the enactment of the sages); R. Mair, in the last sentence in our Mishna, which is stated in his name elsewhere, R. Jehudah in the following Boraitha: One has to bring the offer that is prescribed for the present of a rich man to his wife. (The difference between the offering of rich and poor is explained in Lev. xiv. 21.) Because in the marriage contract he writes: I will take upon myself all the responsibility you have had before our marriage—*i.e.*, from the time he marries her he takes upon himself to make good all her obligations to

the sanctuary, even those contracted before marriage.* Hillel the first in the following Boraitha: The inhabitants of Alexandria used to betroth their wives, but at the time they were prepared to go under the canopy (Chupha) other people used to come and take them away; and the sages were about to proclaim their children bastards. Said Hillel the first to them: Bring me the marriage contract; and finding that it is written there: You shall be my wife when you enter the canopy, therefore the children were not proclaimed such. R. Jehoshua b. Kar'ha in the following Boraitha: If one lends money to some one, he has no right to pledge him through the court for more than he owes him, as is written in the agreement: You may pledge me for all I owe you. [Was this, indeed, because of the written agreement? Did not R. Johanan say: If one has pledged his debtor, and thereafter he has returned him his pledge for a short time, and meanwhile the debtor dies, the lender has a right to take it away from his heirs? (Hence we see that even without an agreement the lender acquires title to the pledge.) The agreement benefited the lender, in case the debtor has used the pledge and diminished its value, to collect it from their other estate.] R. Jose in the following Boraitha: In the places where it was customary to consider the dowery prescribed by the father of the bride, as a loan, the husband has a right, in case the marriage contract was not fulfilled to collect it from his father-in-law as a creditor. In the places, however, where it was customary to write in the marriage contract to double the amount, the husband collects the half. The inhabitants of Nahardai used to collect only the third of the amount written. Maremar, however, used to collect the whole amount. Said Rabina to him: Have you not learned where it is customary to write double he collects the half only? This presents no difficulty, as the cited Boraitha treats when it was not made with the ceremony of a sudarium, and Maremar treats when it was.

Rabina used to double the amount in the marriage contract, and when asked to strengthen this with the ceremony of a sudarium, he would say: One of the two, either a sudarium or

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* We have translated this from the text, and according to the commentary of Thosphath. Rashi, however, says that he could not explain this paragraph, and, therefore, he brings another text of *Thorath Kohanim*, which is exactly the contrary to this text. It is remarkable, however, that in the Tract Yebamoth, 35 B., where the same is brought, Rashi explains it exactly as Thosphath did, without any remark, and Thosphath brings the text which Rashi used here.

the double amount. There was one who said when on his dying bed: Give four hundred zuz to my daughter in her marriage contract, and R. A'ha b. R. Ivia questioned R. Ashi: Does he mean to give four hundred in cash, so that the marriage contract should be written eight hundred; or does he mean that it should be so written in the contract, which in reality means only two hundred? It must be investigated how he expressed himself. If he said, Give her four hundred to her marriage, then it is evident that he meant cash, and it must be written eight hundred; but if he said, Give her in the *marriage* contract four hundred, it means only two hundred. (Said the Gemara:) In reality it is not so. There is no difference if he said to her marriage, or in her marriage contract, it must be considered that he intended two hundred, unless he said give her four hundred without any addition.

There was one who undertook to work up a field, and he said: Should I neglect I will give you one thousand zuz. Finally he neglected to work up a third of it, and the sage of Nahardai decided he shall pay him 333⅓ zuz. Rabha, however, said the whole thing was only an asmakhta, which gives no title. But why should this be different from that which is stated in our Mishna: If it will be neglected I shall pay with my best estate? In the Mishna there was no exaggeration; here, however, when he said he will give a thousand it was merely an exaggeration.

There was another man who undertook to work up a field for poppy and had sowed it with wheat. The wheat, however, became dear, so that the price was equal to poppy (so that the owner of the estate suffered no loss). R. Kahna, nevertheless, was about to deduct from the agreement the value of the fertility which was used less for wheat than it should have needed for poppy. Said R. Ashi to R. Kahna: People say it is better for one that his earth should become meagre than he himself.

There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy, and Rabina was about to say that the hirer shall take the value of the increase. Said R. A'ha of Difti to him: Was the increase from the grain only; was it not also from the fertility of the earth? The sages of the Nahardai said: If one takes an article to sell in places where it is dearer, for the half profit, the enactment of the sages was that half shall be considered a loan and the other half a deposit; and they did so to benefit both. The borrower is benefited, as he has the right to use the half for his

own expenses, and the lender, because the half, which is considered a deposit, collects it from his heirs in case he dies, as it becomes no personal property of theirs. This is in accordance with R. Ida bar Rabin.

Rabha, however, said: It is therefore called business that first one must not use it for himself; and, secondly, that if he dies it should not be considered personal property of his heirs.

Rabha said: If one has given articles for business without any stipulation (the law of which is that the owner takes three-quarters of the profit, and suffers half if damage occurs), and took from him two notes, *e.g.*, if he sold him two bundles of goods for two hundred zuz, and took a note for each of them for a hundred zuz, and the borrower had sold out one bundle for one hundred and thirty zuz and the other for seventy, then if there were only one note, it would be considered no profit nor loss. But now, as there are two, to one there is a profit of thirty zuz, of which the lender takes two-thirds or twenty, and the other one is considered thirty zuz loss, of which the lender suffers half. If, however, it is the reverse (*i.e.*, he took two loans in two days on one note), then in such a case as stated above, the borrower suffers (five zuz), not the lender. He said again: If one took money for business, and has had a loss, and thereafter he exerts himself and regains the loss, but failed to notify the lender both of the gain and the loss, he cannot claim that the lender shall suffer any loss, because the lender may say to him: You have exerted yourself for your own benefit to regain it, that people shall not say that you are a poor business man. The same said again: If two persons took money from one lender for business, they shall do it together, and one of them profits and wants to separate himself from his partner, he has no right to do so if his partner protests and says: Let us be partners until the time appointed for returning the money. And if one claims: I would take half the profit for my share, the other may prevent him, saying he cannot take out the profit because of the possibility of future loss. And even if one of the partners claims the half profit and half of the principal amount, the other can prevent him by saying: We cannot divide, as the whole money belongs to the business. And if he promised his partner that in case of loss he shall suffer his share, his partner can prevent him by saying that the fate of two is better than of one.

MISHNA *IV.:* If the gardener did not want to weed the field, saying: I will give you your due, he must not be listened

to, as the owner may claim, To-morrow you will leave this field, and I will have to weed it myself.

GEMARA: And even if the gardener says: I will weed it afterwards, the owner may say: I want good wheat, and if it is not weeded the wheat cannot be as good as when weeded. And if he says: I will buy you good wheat from the market, he may say: No, I want the wheat from my estate, and even if he claim: I will weed out that share of it which belongs to you only, he may say that by doing so you will spoil the reputation of my field. But did not the Mishna give only one reason, *that I will have to weed it, etc.?* All these claims are included in the one reason given by the Mishna, that finally he will have to weed it. (The statements of this Mishna apply only to a hirer, but not to one who took it in partnership.)

MISHNA *V.:* If one took a field in partnership, and it was not productive, he must not leave it as long as there is hope of bearing even only one heap. R. Jehudah says that there is no appraisement as to the contents of a heap, he therefore maintains that he must not leave it if there is hope of the products being at least as much as was sowed.

GEMARA: The rabbis taught: If one took a field in partnership and it was not productive, if there is grain sufficient to make one heap, he is obliged to work it up; as the usual written agreement of such a partnership is as follows: I will plough, sow, weed, make sheaves, thresh, blow, and will make a heap of it for you, and then you will take half and I for my labor the other half. What should be the quantity of the heap? To cover the winnow—*i.e.*, that if put in it should be completely covered.

The schoolmen propounded a question: How is it if both edges of the winnow are still visible? Come and hear. R. Abuhu said: R. Jose bar Hanini explained to me, when the right side of the winnow cannot see the sun. It was taught: That quantity of the heap is three saahs according to Levi, and according to the disciples of R. Janai two. Said Resh Lakish the saahs in question must remain after it was cleaned out.

But how much is it? Said R. Ami in the name of R. Johanan, four saahs for one kur, and R. Ami himself maintains eight for a kur. There was a certain old man who said to R. Huna b. Rabba bar Abuhu: I will explain to you the reason of their statements. In the year of R. Johanan the earth was fertile, and four for a kur was sufficient, but in years of R. Ami

the earth was already meagre. There is a Mishna (Peah XV.): If the wind has spread the sheaves it must be appraised how much gathering for the poor there would be if this had not occurred. R. Simeon b. Gamaliel said: He may give to the poor as much as was sowed, and what a quantity does he mean? When R. Dimi came from Palestine he said: In the name of R. Eliezar or R. Johanan four kabs to a kur.

R. Jeremiah questioned, Is it meant for a kur seed (*i.e.*, for a kur sown in the field), or for the field where a kur grain can be gathered; and if you should mean for a kur seed, there is still a question whether it means for sowing by hand or with oxen? (As to the last one the quantity is larger.) Come and hear. When Rabin came he said in the name of R. Abuhu, quoting R. Eliezar or R. Johanan, four kabs for a kur seed; the question, however, whether with hands or oxen remains undecided.

MISHNA *VI.:* If one hires a field, and the locusts destroyed it or it was burned, if this was a general plague in the country he may deduct from the agreement, but not otherwise. R. Jehuda, however, maintains that if he has hired it for money, he must deduct under any circumstances.

GEMARA: What is to be understood by a plague of the country? Said R. Jehudah as, *e.g.*, the majority of the valley, where there were many fields, was destroyed. Ulah, however, said: If four fields, on all its sides.

If the owner had told him to sow it with wheat, and he had sowed it with barley, and the fields of the majority of the valley were destroyed and also his barley, may the owner of the field claim that if he had sowed it with wheat, according to the agreement, it would not have been destroyed, as I have prayed that I should succeed in wheat, not in barley? Common sense dictates that his claim is right. If it happened that all the fields of the landlord were destroyed, and which was hired included, but the majority of the valley was not destroyed, may the hirer claim that since all your estate was destroyed, it is your fate that this field was also destroyed? The landlord, however, claims that if you hadn't hired it some of my field should have been left to me, consequently it is your fate. Common sense dictates that the claim of the landlord is right. If all the estates of the hirer were destroyed, and also the majority of the valley, may the hirer claim that because the majority of the valley was destroyed he has not to pay, or the landlord may

say: As all your estate was destroyed, it was your fate that this was also destroyed? Common sense dictates the claim of the landlord is right. But why should not the hirer claim that if it were my fate something would be left to me, as it is said above concerning above? As the landlord may say that if Providence would favor you, some of your own fields would have been left to you. An objection was raised from the following: If that year was a year of destruction, or a year which was like the years of Elijah (without rain), it must not be counted among the years of redeeming. We see then that he compares a year of destruction to the years of Elijah, when there was no grain at all, but where grain is to be found it is not to be considered a plague of the country.

Said R. Na'hman bar Itz'hak: There it is different, as it is written [Lev. xxv. 15]: "According unto the number of harvest years," etc., which signifies that as long as there is some grain in the country it is called a harvest year.

Said R. Ashi to R. Kahana: According to your theory, let the Sabbatic year be counted, as there is grain out of Palestine where the Sabbatic year is not observed, and he answered: The Sabbatic year is a decree of the king, and must not be considered at all.

Samuel said: The statement of our Mishna applies only when he has sowed it and it was grown, and then the locusts have destroyed it. But if he has not sowed it at all because of the locusts, the hirer is responsible, as the landlord may claim that if you would sow it the verse of Psalm, xxxvii. 19 would apply to me.

There is one Boraitha which states that if this happened once, he has to sow it the second time and also the third, but not if it happened the third time also. And another Boraitha states that he has to sow it even after the third time, but not after the fourth. This presents no difficulty. As one Boraitha is in accordance with Rabbi, who holds that two times is to be considered a hazaka, and the other Boraitha is in accordance with R. Simeon b. Gamaliel, who holds that it must not be considered so unless it happened three times. Resh Lakish said: The Mishna treats: In case it was sown, grown, and then was destroyed by the locusts; but if he has sown and it didn't grow, the owner of the estate may claim he shall sow it again and again, until the sowing time is past. But when is it considered past? Said R. Papa: When the gardeners come from the field in the month Adar.

An objection was raised from the following: R. Simeon b. Gamaliel in the name of R. Mair and also R. Simon b. Mnasia said: That the latter half of Tishri Mar Cheshvan and the first half of Kislev is the time for saving, the latter half of Kislev Tabeth and the half of Shbat is winter; the latter half of Shbat, Adar, and the half of Nisan is cold; the half of Nisan, Iyar, and the half of Sivan is harvest; the latter half of Sivan, Thamuz, and the half of Ab is summer, and the half of Ab, Ellul, and the half of Tishri is heat. (Hence we see that the time of sowing is only until the half of Kislev.) R. Jehudah counts from Tishri. R. Simeon, however, counts from Cheshvan. But even then, who is more lenient? R. Simeon, who counts from Cheshvan, does not even count the sowing-time until Adar. This presents no difficulty. The one speaks of a case when he took the fields for sowing wheat and corn, which are usually sown in the beginning of the winter, and the other speaks of barley and peas, which are usually sown in Adar.

If he hired for money, etc. There was one who undertook an estate to sow garlic on the shore of the river of the old king; and it happened that the river was stopped. When the case came before Rabha, he said that it is not usual for this river to be stopped up, and consequently it is therefore considered a plague of the country, and you may deduct. Said the rabbis to him: Have we not learned in our Mishna that R. Jehuda said if he took it for money, he must pay under all circumstances, and he answered: There is no one who cares for his decision.

MISHNA *VII.:* If one hires a field for ten kur wheat per annum, and the products are poor, he may pay him with the same. The same is the case if the wheat was good, he cannot say: I will pay you with the best of the market, but must furnish him with the same.

GEMARA: There was a man who took an estate for pastio (pasture; such a field is usually sown many times a year) for one kur of barley. First he used it for pasture, and afterward he sowed barley in it, and the barley was bad. R. Habiba of the city of Sura, on the shores of the Euphrates, then sent a message to Rabina, asking: How should such a case be decided? Is it equal to the statement of our Mishna, which says that he must pay with the products of the estate, or as he hires it for pasture, and uses it for barley, it is different? And Rabina answered: What comparison is this? In the case of the Mishna the earth was sown according to the agreement, and the pay-

ment has to be with its products; but here he has not conformed to the agreement, hence he has to pay him with the good barley of the market.

There was a man who hired a vineyard for ten barrels of wine, and thereafter the wine became sour. R. Kahana was about to say that this case is equal to the case stated in the Mishna, that if the field becomes stricken and produces bad barley, he may pay him with its products. Said R. Ashi to him: What comparison is this? In the case of our Mishna the earth failed to give what was expected of it; here, however, the earth did fulfil the expectation, and the *wine* became sour thereafter. However, R. Ashi admits that when the grapes become wormy, and also in case the sheaves of the field became spoilt, that he has to repay him with the same.

MISHNA *VIII.:* If one takes a field for sowing barley, he must not sow wheat in it; but if for wheat, he may sow barley. R. Simeon b. Gamaliel forbids this: he must not sow peas in that which was taken for grain, but he may sow grain in that taken for peas. R. Simeon b. Gamaliel forbids this also.

GEMARA: Said R. Hisda: The reason of R. Simeon's statement is, because it is written [Zephaniah, iii. 13]: "The remnant of Israel shall not do injustice or speak lies, and there shall not be found in their mouth a deceitful tongue."

An objection was raised from the following: That which was collected for the poor on Purim must be distributed at the same time without any particulars. However, the poor must not buy with the donation a strap for the shoes, unless it was so stipulated by the elders of the city. So is the decree of R. Jacob in the name of R. Mair. R. Simeon b. Gamaliel, however, was lenient (permitting this). Hence we see then that he was lenient in his decision, and in our Mishna, however, he is rigorous. Said Abye: R. Simeon's reason is as my master (Rabba) said: He who likes his earth to bring forth good fruit, should sow in it one year wheat and the other barley; one year in the length and the second in the width. This, however, is the case if he does not sow in time, but if in time it does not matter.

He must not sow peas, etc. R. Jehudah taught to Rabin: If for grain, he may sow peas. Said Rabin to him: But did not the Mishna state he must not? And he answered: My statement is not contradictory, as the Mishna speaks of Palestine, which is mountainous, and the leanness of the earth is taken into consideration; and I talk of Babylon, which is

situated in a valley, and there is no fear of this. Said R. Jehudah to Rabin b. Na'hman, Rabin, my brother: Cresses growing among flax may be used without fear that there is robbery (because the owner is benefited by their removal, as they do more harm than good). If, however, they are placed outside of the flax-beds, then it is robbery, and the same is the case even if they grow among the flax, but are already grown up as much as the flax, and so do no more harm. The same said again: Rabin, my brother, in our fields, which are closely attached, there are some among my trees, the branches of which are bent toward yours, and *vice versa*. In such cases, however, the custom is that the fruit belongs to the side to which the branches incline. As it was taught: A tree which stands on the boundary of two estates belonging to two different persons, where the branches are inclined there should the fruit be used. So said Rabh. But Samuel maintains that it is to be divided. An objection was raised from the following: A tree which is placed on the boundary is to be divided, and this contradicts Rabh. In order that the cited Boraitha should not contradict Rabh, Samuel explains that it speaks of a case in which the tree in question occupies the whole boundary; but, then, it is self-evident? It means even when all the branches are inclined to one side. However, even then it is self-evident? Lest one say that then one's neighbor has a right to say: You may take of the fruit of those branches which are inclined to your field, and I will take the remainder, it comes to teach us that our neighbor may say, We must share equally.

The same said again: Rabin, my brother, see that you do not buy an estate close to the city, as R. Abuhu in the name of R. Huna quoting Rabh said: One is not allowed to stand and consider his neighbor's field when the fruit is nearly ripe because of an evil eye. Is that so? Did not R. Abba meet the disciples of Rabh, asking them what has Rabh to say to the following verses [Deut. xxviii. 3–6]? And they answered: Rabh said thus: "Blessed shalt thou be in the city," means your house shall be near the synagogue; and "Blessed shalt thou be in the field," means that your estate should be nearer to thy city; "Blessed shalt thou be at thy coming in," means you shall find your wife and family ready to please you; and "Blessed shalt thou be at thy going out," means that your offsprings shall be equal to you. And R. Abuhu answered: R. Johanan interpreted them differently—namely: "Blessed thou

shalt be in the city," means that the closet of man's necessity shall be near his house [but not a synagogue, as the one who goes further is rewarded for his walk]; "Blessed shalt thou be in the field," means that thy estate shall be thirded, one third in grain, one in olives, and the other in wine; and "Blessed shalt thou be in thy coming in and in thy going out," means that your departing from this world shall be equal to your entering, as your entering was without any sin, so shall be your departing. (Hence we see that it is a blessing if the estate is near the city?) This presents no difficulties. When it is fenced it is a blessing, but not when it is not.

It is written [Deut. vii. 15]: "And the Lord will take away from thee all sickness." Said Rabh: It means an evil eye. And Rabh is in accordance with his theory, as it happened once that Rabh was at the cemetery, and he did what he did, and said thereafter: I see that ninety-nine of the dead were killed by an evil eye, and only one died a natural death. But Samuel said: All sickness is from the air, and as he said elsewhere, that every sickness and death came from the air. But are there not some who were killed by the government? Also these, if not the air, a medicine could be prepared that would restore them. R. Hanina, however, says that the verse means cold, as it is written [Proverbs, xxii. 5]: "Thorns and snares," etc.,* from which we infer that everything is in the hands of Heaven but cold. R. Eliezar said, *i.e.*, the gall; and so also have we learned in the following Boraitha: The word ma'hlah† means the gall. And why is it called ma'hlah? Because it makes sick the whole body of the man. According to others it is called ma'hlah, because there are eighty-three kinds of sicknesses to which the cause is only the gall (and the letters of the word ma'hlah number eighty-three), and all these sicknesses are abolished by consuming bread with salt and a pitcher of water early in the morning.

The rabbis taught: Thirteen advantages can be gained by taking the early morning meal—namely: prevention from heat, cold, winds, evil spirits, and also the brightening of the fool, the winning of a law-suit (Rashi explains this, that the early meal brightens his mind so that he can explain his case clearly to the court), to learn, to teach, his words are listened to, his

* The Hebrew term for this is ziria, *i. e.*, cold, for which the Talmud takes it; Lesser, however, translates it differently, according to the sense further on.

† The Hebrew term for sickness is "ma'hlah."

learning is retained, his flesh does not give too much heat, and he does not lust for a strange woman, and the meal also kills the parasites in the intestines, and according to others it removes jealousy and brings love.

Said Rabba to Rabha bar Mari: Where is it from that people say, Sixty racers cannot reach the man who takes his meal early in the morning; and also the rabbis say, Get up early in the morning and eat, in the summer because of the heat and in the winter because of the cold? And he answered: Because it is written [Isaiah, xlix. 10]: "They shall not be hungry nor thirsty, and neither heat nor sun shall smite them," etc., which is to be explained that they shall not be smitten by heat and cold, because they were not hungry in the morning. And he rejoined: You infer this from this; I, however, from the following [Ex. xxiii. 25]: "And ye shall serve the Lord your God," means the reading of shemah and praying; "and he will bless thy bread and thy water," means the bread and salt and the pitcher of water taken in the morning; (and this will do that:) "I will remove sickness from the midst of thee."

R. Jehudah said to R. Ada, the land-surveyor: You should be very particular in your business. Bear in mind that every inch of the earth is fit for sowing saffron. And he said again to the same: When you are measuring the trench from the river to the fields, you should not be particular with the four ells near the trench which the owners are forbidden to sow. However, that which remains on the shore for anchoring, do not measure at all, but leave it so that it should be conspicuous enough; and this advice is in accordance with his theory, that the four ells of the trench belong only to those who are benefited by them, but that of the shore belongs to every one.

R. Ami proclaimed: A forest or any other group of trees placed on the shore must be cut off at the width of a shoulder (*i.e.*, to leave space for the towmen of the boats on both sides of the river). R. Nathan b. Hoshea had cut off sixteen ells, and the inhabitants of Mashrunia beat him bloody. He thought sixteen ells were needed for a public thoroughfare. For the towmen, however, is only required sufficient space for the managing of ropes bound to the boat.

Rabba b. R. Huna possessed a forest on the shore of the river, and when he was asked to cut it off, he answered: Let the forests which are before and behind mine be cut off, and then I will cut off mine. But how could he answer so? Is it

not written [Zephaniah, ii. 1]: "Gather yourselves together." And Resh Lakish said: That is, Correct thyself first, and then others? The forests before and behind him belonged to a governor of the Persians, Parzak, and Rabba was aware that he would not care to cut off his, and no one can compel him, consequently the carriers of the boats could not pass anyhow; what, then, would be the use of his cutting? Rabba bar R. Na'hman was sailing in a boat, and had seen a forest on a shore, and to the question, Whose is it? he was told that it was Rabba b. R. Huna's, and he applied to him the verse [Ezra, ix. 2]: "And the hand of the princes and the rulers hath been the first in this trespass," and he then commanded his people to cut it off. (He was not aware of that which was said above.) Rabba b. R. Huna came and found them cutting, and said: Who has cut this, his branches shall be cut off; and it was said that all the years of the existence of Rabba b. R. Huna the children of Rabba b. Na'hman were not preserved.

R. Jehudah said: All the inhabitants, even orphans, of the city must contribute to the repairing of the wall of the city if it is destroyed, but not scholars, as they need no guard (Rashi explains that their wisdom guards them); but if the spring was spoiled the scholars must also contribute (as they also require water). This applies only in the case of contribution of money, but when the contribution means to dig themselves, then the rabbis are to be freed, as it would be a humiliation for them to do this work. He said again: When there is a stop in the river, the people behind it have to contribute to the repairing of it, but not those who live before it; with rain-water, however, it is the reverse. The illustration is in the following Boraitha: If five gardens, one behind the other, which are watered from one spring, and the spring becomes spoiled, all of them are obliged to support the people of the highest one. Hence the very lowest one has to support all those above it; and if it happens that only the entrance of the lowest is spoiled, then the above are not obliged to support it. Reverse is the case with five courtyards which pour their unclean waters to one sewer, and if the channel was spoiled at the last one, all of them must support it (and also all that are above the yard have to support the lower ones, but the highest has to shift for itself).

Samuel said: If one takes possession of a dock he is a rascal, but he cannot be removed by law (Rashi explains this to mean that at the time of the Persians the estate was ownerless, and

he who paid the duty to the government acquired title, as he who took possession of the dock is given title, but this act is considered rascality, as the dock is for loading). Now, however, as the Persians write in their deed: "You may acquire title on this estate as far as the measure of a neck of a horse from the water," if any one takes possession of a dock, he is to be removed.

R. Jehudah in the name of Rabh said: If one takes possession of a field which was placed between two brothers or partners, it is considered a piece of assurance, but he cannot be removed by law. R. Na'hman, however, says that he may be removed also. But if there is no other right than preëmption, he is not to be removed. The N'hardais, however, maintain that even for this he is to be removed, as it is written [Deut. vi. 18]: "And thou shalt do that which is right and good in the eyes of the Lord."

In case the buyer asked advice from the preëmptor, and the latter advised him to buy, is his word sufficient, or must it be done with the ceremony of a sudarium? Rabbina says the sudarium is not necessary, and the N'hardais say it is; and so the Halakha prevails.

Now, as it was concluded that the sudarium is necessary, if it was not done, and the land became greater or less in value, it is considered under the control of the preëmptor, so that the buyer has to pay the prevailing price. If, *e.g.*, he bought it for one hundred and it was worth two hundred, it must be investigated. If the owner has lowered the price for every one, then the preëmptor has to pay him only one hundred, as he could buy it from the owner at the same price; if, however, the price was lowered only for him, then he has to pay the two hundred. If, however, he had bought for two hundred, and it was worth only one hundred, the schoolmen were about to say that the preëmptor may say to the buyer: My message to you was for my benefit not for my loss.* Said Mar the elder b. R. Hisda to R. Ashi: The N'hardais have declared in the name of R. Na'hman that there is no cheating concerning estates.

If one bought a field which was placed in the centre of others

* The Ashri maintains that this claim is not meant that he may give him only one hundred zuz, and the buyer shall lose one hundred, as this would not correspond with the verse cited, "right and good." As if the estate would remain with the buyer it may be he would lose nothing, or to him it was worth double; but this is meant that the sale shall be considered invalid.

it is to be investigated; if this field is distinguished to be the best or the worst of all his other estates then the sale is valid; and if not, it is to be feared that that was craftiness on his part, as he may have bought it for the purpose of claiming the preemption to all fields around him.

To a presented estate the right of preëmption does not apply. Amemar, however, maintains that if the donor obliged himself in writing to be responsible for it, this law applies.

If one had sold out all his estate to one buyer preëmption cannot be claimed, and the same is the case if he returns his estate to its first owner from whom he bought it. The same is the case with an idolater. If bought, the buyer can say: Am I worse than your first neighbor? You ought to be grateful to me that I have driven a lion out from your neighborhood. If sold, the law of preëmption does not exist, as it applies only to the buyer, and he, the idolater, is not under the obligation of the above-cited verse ("do right and good"). To the seller, however, this does not apply, as he may say: No one can compel me to sell my estate. However, the seller is to be put under ban until he obliges himself to be responsible for any harm done by this buyer to the preëmptor.

To a pledged estate the law of preëmption does not apply, as R. Ashi declared that he had heard from the elders of the city of Suria that therefore is a pledge called Mashkhantha, because the one to whom it is pledged is a neighbor. (See above.)

If one wishes to sell out his estate because it is placed at too great a distance, and to buy one near him, preëmption cannot be claimed; and the same is the case if he wishes to sell out the estate near him because it is bad and to buy good ones. (The above-cited verse means to "do right and good" to one as long as he does no harm to another.) If it is sold for taxes or for the support of a widow or for burial, this law does not apply. The N'hardais said that in such cases the estate may be sold out without any proclamation; the same is the case if he sold it to a woman, to orphans, or to his partners. If he has neighbors in the city and neighbors in the field which are not considered preëmptors, the former have the preference. A scholar has the preference to a neighbor and even to a relative. The schoolmen questioned: How is it if he was both a neighbor and a relative? Come and hear what is written [Proverbs, xxvii. 10]: "Better is a near neighbor than a distant brother."

If the buyer is about to pay with current money, and the preëmptor wishes to pay with money which is of greater value but is not current, he loses his right. If the preëmptor sends money sealed (and the owner of the estate fears to open it, as it may not be the full value), and the buyer sends it open, he also loses his right. If the preëmptor says: I am going to try to get money, it is not to be taken into consideration; if, however, he says: I have money, and I am going to bring it, if he is a wealthy man the same may be postponed, but not otherwise. If the lots belong to one and the houses to another, the former has a right to prevent the sale of the latter, but not *vice versa*. The same is the case if the field belongs to one and the trees thereon to another.

If the preëmptor wants the lots for sowing, and the buyer wants it for houses, the latter has the preference. If there was a stone or a group of trees separating the two fields, if the preemptor can in spite of this make one bed for sowing, attaching the two estates, preëmption may be claimed, but not otherwise.

If there were four preëmptors, one on each side, and one of them hastened and bought it, the sale is valid, but if all four appear at the same time, the estate must be divided diagonally.

MISHNA *IX.:* If one hires a field for a few years (less than seven) he must not sow flax in it; and he has also no right to cut branches off the sycamore tree for building purposes. If, however, he took it for seven years, he has a right in the first year to sow flax, and also to cut from the above-mentioned branches.

GEMARA: Said Abye: He has no right to the branches of the sycamore, but he has a right to the improvement of it. Rabha, however, maintains that he has no right even to this. An objection was raised from the following: When the term of his agreement to this field is at an end, the contents of the field must be appraised. Is it not as, *e.g.*, the improvement of the sycamore? Nay; it is meant the vegetables and herbs. If so, why then the appraisement? Let him take it out and go. If it happens before the market-day arrived? Come and hear. If the sabbatical year arrived, when the term of this field was not yet up, it must be appraised. [Does, then, the sabbatical year abolish the agreement? Read then the jubilee year; but even then the jubilee year abolishes only sales, but not hirings.] Read then: If the jubilee year arrived while the agreement is not yet up, it must be appraised. Now that the vegetables

should be appraised, does not apply here as in the jubilee year they are ownerless? You must therefore say that, *i.e.*, the improvement of the sycamore. Hence it is contrary to the statement of Rabha. Abye, in order that this shall not contradict Rabha, explains it thus: A jubilee year is different, as it is written [Lev. xxv. 33]: "Then shall the house that was sold," etc. The "house" which is sold . . . to be free, which signifies that a sale is to be returned, but not an improvement. Then let this law be inferred as a standard. Nay, there was a right sale, and the jubilee year is a command of the Lord, of which a hired article cannot be inferred.

R. Papa hired fields for pasture, and some trees sprouted in them, and when his term ended he demanded the improvement of them. Said R. Shesheth b. R. Idi to him: Would you also demand for the increase in thickness of a tree if there should be one? And he answered: Then it would be altogether different, as it is not usual to hire a field for this purpose, but I have hired this estate with this intention.

(Says the Gemara:) Is this in accordance with Abye, who said above that he has a right to the improvement of the sycamore? Nay, this may be explained also in accordance with Rabha, as there the hirer suffered no damage from the improvement of the sycamore. Here, however, there is damage, as the place where the tree grows he could not use for pasture. Said R. Shesheth to him: Then I have damaged you this little space, here is the value of it and go. And he answered: Nay, I would sow saffron in this place. Rejoined R. Shesheth: With your claim that you would sow saffron, you have made clear your intention that you did not wish to improve this estate with plants which should remain forever, but with such as you could take off at will; consequently your claim is for the value of the trees for fuel; then take this value and go.

R. Bibi bar Abye hired a field, and they surrounded this field with an embankment, and some trees grew up from it, and when his term was at an end he asked for this improvement. Said R. Papa to him: Because you are descendants of frail people you speak frail words; even R. Papa demands it (in the above) only because he has had damage, but here, what damage have you had?

R. Joseph had a planter who planted all his trees for half product, and he died and left five sons-in-law, all planters. Said R. Joseph: Hitherto I have had only one to rely upon,

and now I have five; each of them may rely upon the other, and my gardens may be neglected. Therefore he said to them: If you want to take the improvement of this year and resign, it is all right; if not, I will discharge you without any reward, as R. Jehudah—according to others R. Huna or R. Na'hman—said: If a planter dies his heirs may be discharged without reward. (Says the Gemara:) In reality it is not so.

There was a planter who said: If I do any damage I will be discharged. Finally he did. Said R. Jehudah: He may be discharged without any reward. R. Kahana, however, maintains he may be discharged, but he must be rewarded for what he has done. R. Kahana, however, admits that if it was so stipulated, then he is not to be rewarded. Rabha, however, says: Even then his saying was only an asmakhta, which gives no title. But why is this different from what we have learned above: If I neglect, etc. . . . I will pay with my best estate? There is no difference, as in both cases only the amount of the damage is paid; there he pays cash for the damage done, and here is deducted the amount of the damage, and the remainder must be paid to him for his reward.

Runia, the planter of Rabbina, did damage and was discharged; and he came to complain to Rabha, who answered him: He has done right; you have so deserved. And he rejoined: But he has not given me any notice. And Rabha said: That was not necessary at all. This decision is in accordance with his theory elsewhere, that an infant, teachers, planters, butchers, barbers, and the scribes of a city may be discharged without any notice; as there is the rule that damage which cannot be repaired annuls the agreement; and damage done by such people is counted under that category.

There was a planter who said: Give me what I am entitled to of the improvements, as I want to go to Palestine. When the case came before R. Papa b. Samuel, he decided that so should be done. Said Rabha to him: Was this improvement wholly due to his effort; did not the earth do its share? And the planter said, I don't ask for the whole improvement, but only for half; and Rabha rejoined: Until now the gardener took the half for his labor, but now when he leaves, the owner is compelled to hire another man and to pay him from his pocket. And R. Papa answered: I mean he shall take a quarter of the improvement and a quarter shall remain for future labor.

R. Ashi taught that the above decision that he shall take a

quarter means a quarter from the two-thirds profit that the owner of the vineyard takes for himself, which makes a sixth of the entire improvement (*e.g.*, if the improvement was worth six dinars, two of them are for the gardener, three for the owner, and one for the planter—as Minyumi bar R. Nehumi said: In the places where the planter takes half and the gardener a third, the planter who wishes to leave the work, his reward must be appraised, so that the owner shall not suffer damage; and therefore if the quarter in question means a sixth, as explained above, it is correct, but if it should be explained literally, a quarter of the whole improvement, then the owner would suffer a half-dankha damage. Said R. Aha b. R. Joseph to R. Ashi: Let the planter say to the owner: You give your share to the gardener, and with my share I will do as I please (*i.e.*, I will sell out to some one my share, and he will do his work without paying the gardener). And R. Ashi answered him: Leave thy objections for the section Holiness, which is so complicated that your objections will best fit there. Said R. Minyumi b. R. Nehumi: If an old group of vines, which do not bear fruit, remains in the vineyard, the planter has to receive half of it, as it is considered equal to those branches of the vineyard of which the planter takes half. If, however, a vineyard was flooded, and the vines were taken out or planted in another place, the planter gets only a quarter of it.

There was one who pledged his vineyard for ten years, and it became old in eight years. Abye said: The old vines are considered improvement, so that it belongs to the lender, and Rabha said: This is to be considered the principal amount which is to be sold, and for the amount to buy another vineyard with improvement, so that the lender shall use the fruit. (Come and hear an objection:) If a married woman inherits old vines and olives, they are to be sold for fuel and for the value estate is bought, and the husband loses the fruit. (Hence we see that it is considered principal amount, and this is an objection to Abye.) This Boraitha treats of a case, that where the woman inherited trees without estate, and if it would be allowed for the husband to consume them all, then nothing would remain from the principal amount, and this is against the law, as the principal amount of the woman must always remain to her benefit; so was it explained in Tract Khthubet.

There was a note in which was written years without a number. The landlord claims it means three, and the lender

claims it means only two; meanwhile the lender hastened and took the fruit from the third year also. Now the court has to decide who should be trusted. According to R. Jehudah the estate must be considered under the hazakah of its present possessor, and he should be trusted. According to R. Kahana, as the fruit there was already consumed by the lender, they must be considered under his hazakah, so that he must not pay for it, and so the Halakha prevails. But is it not decided elsewhere that the Halakha prevails in accordance with R. Na'hman, who holds that the estate must always be considered under the hazakah of its possessor? There was a case which could not be proved which of them was right; but here it can be proved by the witnesses who signed the note, and we do not care to trouble the court twice, *i.e.*, that if the court would now compel the lender to pay, and after he will bring witnesses that he was right, they would have to replevin from the borrower. If in case the broker claims for five years and the borrower claims three, and the note was lost, according to R. Jehudah the lender is trusted, *because* should he intend to make a wrong claim, he would say, I bought it, and as there is no note he could do so. Said R. Papa to R. Ashi: R. Zebid and R. Avira do not agree with the theory of R. Jehudah. Why so? Because this note, which was for collection, was undoubtedly taken good care of, and he has only concealed it, thinking, I will meanwhile use the fruit two years more.

Said Rabbina to R. Ashi: According to this theory the pledges of Sura, to which they usually write as follows: At the elapse of the time for which it is pledged this estate should become free without any payment. Now, if the lender should conceal the document and say, I bought it, should he also be trusted according to R. Jehudah's above theory? Is it possible that the rabbis should make such enactments by which the borrower should easily suffer? And he answered: There was the enactment of the sages, where the owner of the land should pay taxes and dig a trench around it. Now if this land was bought without a trench, and the taxes were unpaid, what could the buyer do? And he answered: He has to protest, in order that people shall know that it is a pledge only, and by not doing so he has done harm to himself.

If the gardener claims: For the half I worked, and the owner says for a third, who should be trusted? According to R. Jehudah, the owner; according to R. Na'hman, however, the cus-

tom of the country must be considered. The schoolmen were about to say that the above do not differ, as R. Jehudah speaks of a place where the gardener takes only a third. Said R. Mari, the son of Samuel's daughter, to them: So said Abye, Even at the place where the gardener takes half they differ, as according to R. Jehudah, even then the owner is trusted, as, should he like to make a wrong claim, he could say the gardener was hired for money for a certain time.

If orphans claim: *We* have made the improvements of this estate (and so no creditor has anything to do with it), and the creditor claims: It was improved by your deceased father, for whom is it to bring evidence? R. Hanina was about to say that the estate is to be considered under the hazakah of the orphans, consequently the creditor has to bring evidence. Said a certain old man to him: So said R. Johanan, that the orphans must bring evidence, because an estate which is to be taken away for debt is to be considered as if already done, and therefore *they* are considered the plaintiffs.

Said Abye: We have also learned the same in the Third Gate concerning a tree which was placed within fifty ells of the city, and it was doubted whether the city was built first or the tree was planted first. It was decided that the tree must be cut off at any rate. Hence, we see that because the tree is to be cut off it is considered as if already cut, and the evidence is only for the money (this will be explained in Third Gate in this case). The same is the case here; the note upon the estate is for collection, and it must be considered as if already collected, and the plaintiffs are the orphans. But how is it if the orphans have brought evidence? Again R. Hanina was about to say, that we give them estate for their claim. In reality, however, it is not so, as they get money, not estate for their claim; and this is to be inferred from the statement of R. Na'hman in the name of Samuel, who declares in the First Gate, page 216, that there are three to whom the improvement must be appraised, and they take money not estate for their claim. (See there.)

MISHNA *X.:* If one hires a field for the whole sabbatic season (*i.e.*, seven years, from the first year until the sabbatic year is past) for seven hundred zuz, the sabbatic year is included; but if for seven *years* the sabbatic year is to be excluded. A day-laborer has to collect his money the whole night after that day; for a night-laborer the whole day after it; if he was hired for a few hours, the night and day after. For a week,

month, year, or for the whole sabbatic season, if his term expired during the day, collects in the same day, and if at night, that night, and the whole day after.

GEMARA: The rabbis taught: Whence do we deduce that a day-laborer has to collect the whole night after? From Lev. xix. 13: "There shall not abide with thee the wages of him that is hired, through the night until morning." And whence that a night-laborer collects the whole day after? From Deut. xxiv. 15: "On the same day shalt thou give him his wages," etc.; but perhaps it means the reverse? Wages are paid only at the end.

The rabbis taught: As it is written: "There shall not abide with thee . . . through the night"; it is self-evident that, *i.e.*, until morning. Why, then, is it repeated? To teach that the transgression of this commandment comes and ceases with the first morning. But what does he transgress after that time? Said Rabh: He transgresses, You shall not keep wages. Said R. Joseph: Where is such a verse to be found? [Proverbs, iii. 28]: "Say not unto thy neighbor . . . when thou hast it by thee," etc.

The rabbis taught: If one told his neighbor to hire laborers for him, neither of them transgresses the above-cited verses. The owner, because he *himself* has not hired them; and the hirer, because they have not worked with him. However, this is only in case the hirer told the laborer: You shall get your payment from the owner. But if he told him: I will pay you, the transgression rests upon him. Jehudah b. Maramar told his servant: Go and hire laborers for me, and tell them that they will get their payment from the owner. Maramar and Mar Zutra, when they required laborers, hired one for the other, with the stipulation that they should get the payment from the owner. Said Rabba bar R. Huna: The inhabitants of Sura, who usually get their money on the market-day, do not transgress if they postpone the wages of their laborer until the market-day, as the laborers are aware of this. However, if they have money and do not pay, they transgress that of the Proverbs cited above.

For a few hours, etc. Said Rabh: If he was hired for hours of the day, he collects the whole day, and if for the night, he collects the whole night. Samuel, however, maintains that of the day collects at daytime, and that of the night collects at night and the whole day after. But does not our Mishna state "for a few hours, the night and day after," and also further

on, " for a week, month," etc., " if his term expires during the day, collects in the same day," etc., which is an objection to Rabh's statement? Rabh may say that in this case the Tanaim differ, as we have learned in the following Boraitha: A laborer of a few hours of the day collects the whole day; of the night, the whole night. So is the decree of R. Jehudah. R. Simeon, however, maintains that of the night collects the whole night and the day after. From this it was said that one who withholds wages transgresses the commandments of the following five verses: [Lev. xix. 13,] " Thou shalt not withhold anything from thy neighbor," [and *ibid.*,] " nor rob him "; [Deut. xxiv. 14,] " Thou shalt not withhold," etc., and in the above cited verse, " There shall not abide," etc.; and from [Deut. 15,] " On the same day," etc., and finally, that " the sun may not go down upon it." The laborers who finish at daytime, the night does not apply to them, and they who finish at night, to them the day does not apply.

Said R. Hisda: The Boraitha does not mean that one transgresses all the five negative commandments cited above, but the case of hiring is subject to them, that some of them transgress when the day is past, and some when the night is past. What is considered withholding and what robbery? Said R. Hisda: Come again, come again, is withholding; but if one says: "I have the wages, but do not want to give them to you," that is robbery.

R. Shesheth opposed from the following: What is considered withholding? That to which the Law prescribed an offering, which is equal to that, as, *e.g.*, to him who denies a money-deposit. (Hence " call again " is not under that category, as he does not deny.) Therefore, says Rabha, withholding and robbery are one and the same. And why is it written separately? That one, by doing this, transgresses two negative commandments.

MISHNA *XI.*: The commandment: " In the same day you shall give his wage," and also the negative, " there shall not abide . . . until morning," applies to men, cattle, and vessels; however, the transgression is only when the laborer demanded it, but not otherwise. If the owner has transferred him to the storekeeper or money-changer (and he does not pay him immediately) there is no transgression.

A laborer who claims his wages when his time for collection is not yet elapsed, collects his money with an oath (in case the owner says, You were paid already), but not after the lapse of

time. If, however, there are witnesses that he has demanded his money in due time and did not get it, he may collect it with an oath even thereafter.

To a proselyte who promised not to worship any more idols, and not to commit adultery, but not to conform to all other Jewish laws, the commandment, "Thou shalt pay him the same day," applies. However, not the negative commandment, "There shall not abide," etc.

GEMARA: According to whom is the statement of our Mishna? Not to the first Tana, nor according to R. Jose bar Jehudah of the following Boraitha: It is written [Deut. xxiv. 14]: "Of thy brethren," means to exclude idolaters; "or of thy strangers," means a real proselyte;* "that are in thy land," means a proselyte who has only promised not to worship idols. This all treats of the wages of man; whence do we know that cattle and vessels are to be included? Therefore it is written, "in thy land"—*i.e.*, all which is in thy land—and for all of them the transgressions of the five cited verses apply. From this it was said that there is no difference between the wages of man, of cattle, and of hired vessels; the verse, "in the same day," etc., applies, and also the verse, "there shall not abide . . . until morning." R. Jose b. Jehudah, however, said, that to a proselyte of the second kind mentioned above, the first verse, "in the same day," applies, but not the other one; to cattle and vessels neither applies, but "Thou shalt not withhold" does apply.

Now if the Mishna would be in accordance with the first Tana, then the proselyte in question would be a difficulty; and if with R. Jose, then the cattle and vessels stand in the way. Said Rabha: Our Mishna is in accordance with a Tana of the disciples of R. Ishmael, who taught elsewhere the very same as our Mishna does.

What is the reason of the first Tana of the above Boraitha? He takes into consideration the analogy of the expression "hired," which is written in Deut. xxiv. 14 and Lev. xix. 13. As in the former case the law of robbery applies to a proselyte, cattle, and vessels, the same is the case there with wages. And R. Jose b. Jehudah does not take this analogy into consideration. But even then, why should not the law of "in the same day,"

* The Hebrew term for this is Garkho, literally, "thy coinhabitant." The word Gar, however, means also a proselyte. The Talmud explains it *thy* proselyte, *i.e.*, one who promised to keep the whole Jewish law.

etc., apply to cattle and vessels also? Taught R. Hanina: Because it is written [Deut. xxiv. 15]: "That the sun may not go down upon it, for he is poor." This signifies that this law applies only to those who can become poor or rich, excluding cattle and vessels, to which such conditions cannot apply. The first Tana, however, needs this verse, because of the law that if there were two laborers, a poor one and a wealthy one, and he has cash at that time to pay only one of them, the poor has the preference. And R. Jose maintains that this is deduced from *ibid.* 14. The first Tana, however, maintains that both of the above-cited verses are needed; one to give preference to the poor over the rich, and the other to give preference to the poor over the mendicant; and there is a necessity for both, as we could not infer one from the other. *E.g.*, if it were written that the poor laborer has preference over the mendicant, one might say that because the mendicant is not ashamed to demand it, and because the rich laborer is ashamed to make demand, the poor laborer is not to be preferred; and if it were written concerning a wealthy laborer and a poor one, one might say that because the wealthy man does not need it, and a mendicant needs it as much as the poor laborer, the latter is not to be preferred; therefore both are written.

What does R. Jose deduce from the words, "with thee," from the above-cited verse? That which R. Assi said: That even if he was hired only to press one cluster of grapes, if he was not paid in time, there is a transgression of "there shall not abide . . . till morning." The first Tana, however, maintains that this can be deduced from [Deut. xxiv. 15] "his soul longeth," etc., which signifies that the law applies to all things for which "his soul longeth."

It was said: From the words, "the soul longeth," etc., is to be inferred that one who withholds wages is considered as if he would take out the soul. And R. Huna and R. Hisda differed in the explanation of it. According to one it means the soul of the withholder himself, and according to the other the soul of the laborer. The reason of the former is [Proverbs, xxii. 22, 23]: "Rob not the poor . . . and despoil the life of those that despoil them"; the reason of the latter is [*ibid.* i. 19]: "It taketh away the life of those that own it."

Is only when the laborer demanded it, etc. The rabbis taught: One might say that he is guilty even when the laborer does not demand. Therefore it is written, "with thee," which means

with thy knowledge. (And if he does not demand, how should he know that he needs it?) And lest one say that he is guilty even if he has no cash at that time, therefore it is written, "with thee"; and lest one say that he is guilty even if he has transferred him to a storekeeper or money-changer (with his consent), therefore it is written "with thee."

The schoolmen propounded a question: If the storekeeper or the money-changer failed to pay him, may he return his claim to the owner or not? According to Rabha he may, and according to R. Shesheth he may not. Said Rabha: My statement is based upon the teaching of the Mishna, which states "there is no transgression," from which we infer that the transgression does not apply, but the obligation remains. R. Shesheth, however, interpreted this expression, that he is no more subject to that law.

R. Shesheth was questioned: Is piece-work subject to that law or not? Shall we assume that the master acquires title to the improvement of an article given him, and therefore when he returned it and was not paid, it is to be considered as a loan, for which there is no transgression; or that the master does not acquire title and it is considered labor? And R. Shesheth answered, It is subject. But there is a Boraitha that it is not. The Boraitha treats if he has transferred him to a storekeeper or money-changer.

Collects his money with an oath. For what purpose have the rabbis enacted the oath? Said R. Na'hman in the name of Samuel: These enactments were made to serve as a rule forever; in such cases as are biblical, the oath is to be taken by the employer, and the rabbis have removed the oath from him to the laborer for the sake of his livelihood (*i.e.*, that he should be able to take an oath immediately and collect the money).

But is it correct that for the sake of the laborer the right of the employer should be taken away? With this his right is not taken away, as it is more pleasant for the owner that the oath shall be given to the laborer, so that laborers shall not say that he pays his laborers with oaths. But why can you not say the reverse, that it may be more pleasant for the laborer if the employer takes the oath, that the employers shall not say that he is an unjust claimant? Therefore it must be said that the reason is, that because the owner has many laborers, it is easy for him to make a mistake in giving to one man instead of the other and swear falsely. But if so, why should not the laborer

be paid without any oath? To quiet the mind of the employer. But why should it not be enacted that the owner shall pay in the presence of witnesses? This would be too much trouble. But why should it not be enacted that it shall be paid in advance? Because it is convenient to both to have the payment after (for the owner, as perhaps he has not yet prepared it, and for the laborer, as he may lose it while laboring). If so, why should not the law be the same concerning a stipulation; and there is a Boraitha that if the specialist says: Your stipulation was to pay me two dinars for this my work, and the employer says only one, the plaintiff has to bring evidence (and if he has none the defendant takes an oath)? Stipulations are different, because they are usually borne in mind. But if the reason is because the owner is liable to make a mistake, why should not the same law apply even if the time has elapsed, and the statement of our Mishna is not so? It is because usually one would not easily transgress the law, "There shall not abide," etc. But was it not said that the owner is liable to make a mistake, as he has many laborers? This is before the time elapsed, but thereafter one is reminded of his duty. But is then the laborer suspicious of robbery? Concerning the owner there are two hazakahs; one that it is not likely that he would transgress by not paying, and the other that the laborer would not leave his wages without any claim. The laborer, however, has only one hazakah, that he would not demand robbery; therefore the preference is given to the employer.

If there are witnesses, etc. But is he not demanding now? Said R. Assi: The witnesses are that he did so in time. But perhaps he has paid him afterwards? Said Abye: The witnesses are to testify that he had demanded in time, and afterwards was not paid. But does this hold good forever (*i.e.*, that the laborer must always bring witnesses when he demands wages)? Said R. Huna bar Uqba: It means one day after time is elapsed, it was granted that he shall take it with an oath.

MISHNA *XII.:* If a creditor has to pledge his debtor, he may do so only by court; and even then he has no right to enter his house, as it is written [Deut. xxiv. 11]: "In the street shalt thou stand." If he had mortgaged him two vessels, he may take only one; he also has to return a pillow for the night and the plough for the day. If the debtor dies, however, he has not to return it to his heirs. R. Simeon b. Gamaliel, however, said that even to the debtor himself he is not obliged to

return only the first thirty days; thereafter he may sell it out in the presence of the court.

GEMARA: Said Samuel: Even the messenger of the court has a right only to take away from him in the street, but not to enter his house.

But does not our Mishna state that he shall pledge him in the court, of which it is understood that the court may pledge him even in his house? In this case Tanaim differ, as we have learned from the following Boraitha: The messenger of the court who came to pledge a debtor must not enter the house, but stand on the street; and the debtor has to bring the pledge out to him, as it is written: "In the street shalt thou stand, and the man" (which may be interpreted the messenger of the court and the creditor). And another Boraitha: If the creditor himself comes to pledge him he must stand outside, and the debtor has to bring him the pledge, but if this is to be done by the messenger of the court, he may enter the house; however, he has no right to pledge cooking utensils, and he also must leave two beds, and a feather-bed for a wealthy man, and a bed and a mat of reeds for the poor one; for him, but not for his wife and children, as the cases of estimation and creditor are equal, concerning the essentials of the debtor, that it must be left to him.

The master said: Two beds, etc. For whom? It is not for his family, as it is stated "for him only." Why, then, are two beds necessary? One for eating and one for sleeping? And this is according to Samuel, who said: That to all sicknesses I know a remedy except to the following three: if one eats unripe dates on an empty stomach, if one wraps himself with a wet *μεθοιον* on the naked body, and if one takes his meal and immediately goes to sleep without walking four ells.

A disciple taught in the presence of R. Na'hman: We have to leave for the debtor if he owes to an ordinary creditor. The same essentials which are left by the collector in case of an estimation must be left also in case of a common creditor.

Said R. Na'hman to him: According to the law all his goods are sold out for the sake of the creditor, as, according to R. Simeon b. Gamaliel, after thirty days even the pillows must be sold out, and you say that here shall be applied the law of estimation.

But whence do we know that the Halakha prevails in accordance with R. Simeon b. Gamaliel? Perhaps it prevails in ac-

cordance with the first Tana of our Mishna. The disciple who taught in the presence of R. Na'hman said that so is the law, even in accordance with R. Simeon, and therefore R. Na'hman's objection. But perhaps even R. Simeon b. Gamaliel means to say that only things which are not absolutely necessary are sold, but not that which is. If it were borne in mind that so is the decree of R. Simeon, then all the things would be considered absolutely necessary for him, as Abye said that R. Simeon b. Gamaliel, and R. Simeon, R. Ishmael, and R. Akiba —all of them hold that in this respect all Israel are equal to princes. R. Simeon b. Gamaliel and R. Simeon in Tract Sabbath (pp. 228, 276), and R. Ishmael and R. Akiba in the following Borai'tha: If one owed a thousand zuz and wears a stola worth almost the same price, it is to be removed and replaced by another one according with his dignity; however, it was taught in the name of Ishmael and R. Akiba that all Israel are fit for such a stola. But according to that which was borne in mind first, that we sell out only what is not necessary, it is correct with a pillow and a cover that they can be sold out, and cheaper ones bought. But a plough, to what purpose should it be sold, as all the ploughs are alike? Said Rabha b. Rabba, *i.e.*, in case his plough was a silver one. R. Haga opposed. Let the creditor say: Is it my duty to support you? Said Abye to him: Yea, it is so, as it is written [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God."

The schoolmen propounded a question: If things belonging to a debtor are to be sold out, has the court to consider which should be sold and which left to him, or is all sold out? Come and hear. Rabbin sent a letter: I have questioned this from all my masters, but there was no reply. The question, however, was as follows: If one vowed a mana for the preparation of a temple, and the treasurer came to collect this money from his property, does he take all that belongs to that man, or are the essentials to be left him? And to this question R. Jacob in the name of R. Pada and R. Jeremiah in the name of Ilpha said that it must not, because an *a fortiori* conclusion is to be drawn from a creditor who is obliged to return necessary things. Nevertheless, when, selling out, nothing is left, so much the more as in the case of the sanctuary, which has not to return, that nothing should be left. R. Johanan, however, maintains concerning estimation [Lev. xxvii.]: It is said, "a particular vow," to

the estimated value, and in case of estimation necessary things are left; the same is the case with the sanctuary.

Rabba bar Abuhu met Elijah at a cemetery of idolaters, and questioned him about the law in question in regard to a creditor, and he replied: There is an analogy of the expression "poor" used in both estimation [*ibid.*, *ibid.* 8] and creditor [Lev. xxv. 35], from which we infer that the same law is to be applied in both. Rabba then questioned him: Is not your master a priest, a descendant of Aaron? Why then do you stand on a cemetery? And he answered: It seems that you have never studied Section Taharot (purifications), in which there is a Boraitha: R. Simeon b. Johe said graves of idolaters do not defile, as it is written [Ezek. xxxiv. 31]: "And ye, my flock, the flock of my pasture, are men," which signifies that ye are called men, but not idolaters. Rejoined Rabba: My circumstances hardly allow me to study the four necessary sections (Festivals, Damages, Women, and Holiness); should I undertake to study the remaining two, which are not used at the present time? Elijah then asked, What does he mean? And he answered: I cannot make my livelihood. He then took him to paradise, and told him to take from the leaves lying on the floor in the garden, and he did so. While going out he heard some one saying: Who else has consumed his share in the world to come as Rabba did? He then shook his garment, and the leaves fell out. However, his garment retained the smell of them, and he sold it for three thousand dinars, and he donated them to his sons-in-law.

The rabbis taught: It is written [Deut. xxiv. 13]: "And if he is a poor man, thou shalt not lie down with his pledge," from which it is to infer that if he was rich he may. How is this to be understood? Said R. Shesheth, *i.e.*, if he is a poor man you must not lie down while his pledge is in your house, but if he is wealthy it does not matter.

The rabbis taught: If one lends money to his neighbor, he has no right to pledge him, is not obliged to return, transgresses all the commandments which are in the Scripture concerning (pledging). What does it mean? Said Rabha: He must not pledge, and if he did so, he must return in case the pledge be taken thereafter; but if he took the pledge at the time the money was lent, he is not obliged to return; however, he transgresses the above commandments.

R. Shizby taught in the presence of Rabba: It is written

[Ex. xxii. 25]: "Thou shalt restore it unto him by the time the sun rises" *—a garment used by day and pledged at night, and [Deut. xxiv. 13]: "Thou shalt punctually deliver him the pledge again, when the sun goeth down," means a garment which is used at night and was pledged in the daytime.

R. Johanan said: If the pledge was returned and the borrower died, the lender has a right to take it away from his children. An objection was raised. R. Mair said: Since it was pledged, why then the returning and pledging again? For the purpose that the sabbatic year should not make it free and it should not be considered personal property of his children in case of death. We see, then, that only in case it was pledged again this law holds good, but not if it is already in the possession of his children. Said R. Ada b. Mathna: Have you not tried to explain the curiosity of pledging and returning in some way? Explain it then thus: If it is to be returned, why then the pledging altogether? For the purpose that the sabbatic year shall not free it, and it shall *never* be considered the property of his children.

The rabbis taught: The verse [Deut. xxiv. 10]: "Thou shalt not go into his house to take his pledge," signifies that in his house only you shall not go; you may, however, go into the house of his surety, and it is so written [Proverbs, xx. 16]: "Take away his garment because he has been surety for a stranger." And it is also said [*ibid.* vi. 1–4]: "My son, if thou hast become surety for thy friend," which means, if you were surety, then give him what you have assured, and if you have no money, see some friend, who shall ask him to favor you. "Into his house you must not go" to regain money loaned, but you may do so, for the payment of your work (with your shoulders), for your ass, for your man, or your pictures if you have not made this as a loan to him.

MISHNA *XIII.:* A widow must not be pledged whether she is rich or poor, as it is written [Deut. xxiv. 17]: "Thou shalt not take in pledge the raiment of a widow."

GEMARA: The above is the decree of R. Jehudah. R. Simeon, however, said that only a poor one must not be pledged,

* Bo Hashemesh is the Hebrew term, which can be explained "the sun rises and also it goes down." (See Isaiah, lx., Gen. xxvii.; in both places the word Bo is used.) Hence, Shizby explains, the first the sun rises and the second it goes down.

because it must be returned (daily), and she would get a bad name among her neighbors, but to a rich one it does not matter. (The reason of that statement will be explained in the Third Gate in its proper place.)

MISHNA *XIV.:* One who pledged a nether and upper mill-stone transgresses a negative commandment and is guilty for two articles, as it is written [*ibid.*, *ibid.* 6]: "No man shall take to pledge the nether or the upper mill-stone" (and not this only, but all other articles which are for the preparation of food), "for he taketh a man's life to pledge."

GEMARA: R. Huna said: He who has pledged the nether in question is punished with stripes prescribed for a negative commandment twice, for two negative commandments, for the nether and for man's life; both the nether and the upper mill-stone, he is to be punished thrice. R. Jehudah, however, maintains for each part of them, but not for man's life, as that verse signifies that all other working instruments are under the same law.

There is a Boraitha in accordance with R. Jehudah: If one has pledged a pair of scissors, or a team of cows, he is guilty for two crimes. If, however, he pledge only one of them, he is guilty for one; and another Boraitha states: Lest one say that he is guilty for one crime even if he pledge a pair, therefore it is written: "He shall not pledge the nether or the upper mill-stone." As these are separate instruments used together, one is guilty for each of them separately; so also is the case with all other instruments of such a kind.

There was a man who pledged a butcher knife from his debtor, and Abye told him to return it, as it is an instrument used for preparing food; and for his debt he shall summon the butcher. Rabha, however, maintains that this is not necessary, as the pledger could claim, I bought it. Therefore the whole value of this pledge can be collected for his debt. But did not Abye hold the same theory? Why should this be so different from the case which happened in Nahardai, that goats have consumed peeled barley, and the owner of the barley took the goats for pledge, and has claimed more than the value of it, and the father of Samuel decided that he could collect from them the whole value? There it was different, as the barley was not for hire and loan, but the knife was for loan and hire. And R. Huna b. Abin sent a message: That all things which are for loan and hire, the one who claims that he has bought it is to be

trusted. But did not Rabha hold this theory? Has he not taken away from orphans a pair of scissors and a book of Hagada because they were for loan and hire? Rabha may say that a knife which became spoilt by frequent use one is particular not to lend.

CHAPTER X.

RULES CONCERNING HOUSES, GARDENS, AND OTHER REAL ESTATE OWNED IN PARTNERSHIP, AND WHAT MAY OR MAY NOT BE DONE IN PUBLIC THOROUGHFARES.

MISHNA *I.:* If one owns a house, the upper chamber of which belongs to another, and it falls, the wood, stones, and all other materials are to be divided accordingly (*i.e.*, he who has had a greater share in this building takes more). If some stones or bricks are still saved, an investigation is to be made, from which part of the building the stones were most liable to break; then the saved ones belong to that part which was not liable to break. If, however, one of them recognizes some of his stones, he may take them, provided he reckons them to his account.

GEMARA: From this statement it is to be investigated which part was more liable to break. We may infer that the cause of the ruin was known; then let us see if it was ruined because of the lower, which could not hold the upper part any longer; then the materials which lie in that place where the lower part was placed belong to its owner, and the materials beside it belong to the upper part; and if it was ruined by a storm or a stroke so that the upper part fell first, then there can be no doubt that the upper bricks are the broken ones. Why then the above statement? The Mishna treats in case the material was removed immediately after the falling occurred by the street cleaner, who paid no attention to the cause and the manner of its falling. If so, let us see under whose control they are now, and for the other party who is the plaintiff it is to bring evidence? Partners usually are not particular in such a case where the materials are placed.

Provided he reckons them to his account. Rabha was about to say that it must be divided according to the value, *i.e.*, that he must get broken ones for the amount of his partner's saved ones. Hence he is benefited by his claim that he recognizes the stones belonging to him. Said Abye to him: On the con-

trary, this will not benefit him, but damage, as according to his claim he recognized all that belongs to him; consequently all other stones do not belong to him, but to his partner. Therefore he said the Mishna meant that his partner shall take other saved stones according to the number he took by recognizing, and the benefit of such a claim is that if his bricks were of more value than the others his partner has nothing to say against the quality.

MISHNA *II.:* If the attic was ruined and the owner of the house declined to repair it, the tenant has a right to take his residence down in the house until his attic be repaired. R. Jose, however, said the owner has to repair the roof, and the tenant the rain leaders.

GEMARA: Does the Mishna mean entirely ruined, so that it is impossible to live in, or even if it was ruined in part, *e.g.*, four ells? According to Rabh, as he may use the lower part instead of the ruined, the greater part is meant, and according to Samuel, even a small part; it is disagreeable for one to live in two places. But let us see how the case was. If he hired *this* chamber, he may claim that so is his fate; if any chamber, let him hire another one for his tenant. Said R. Ashi: The case was that the owner said: "This upper chamber of *this* house is rented to you," and with such an expression he subjects the house to the chamber. This is as Rabin b. R. Ada reported in the name of R. Itzhak: It happened that one said to his neighbor, "I sell you this vine which is placed upon the persicum." Finally the latter was thrown out, and the case came before R. Hiye, who decided that the owner must furnish him with another persicum as long as the vine exists.

R. Abba b. Manuel questioned: When the tenant goes to dwell in the lower apartment, must the owner vacate it for the tenant, or should they dwell together; as the owner may say, "I have not rented it to you, that I should be put out"? Should you decide that it is so, there would be another question If there were two upper chambers, one above the other, and the lower became spoiled, should we say the tenant shall go to dwell in the upper one? Or he may claim: "I have rented to ascend one story, and am obliged to ascend two"? This question remains.

There were two who used to live in two upper chambers, one above the other, and the topmost became spoilt, and when the rain came through it did damage. Who is to make the re-

pairs? R. Hiye b. Abba said the occupant of the upper chamber, and R. Ilai, in the name of Hya b. Jose, said the occupant of the lower one. Shall we assume that the above differ the same as R. Jose and the rabbis of our Mishna differ (*i.e.*, R. Jose holds that the party doing the damage must remove the cause of it; and therefore he maintains that the tenant has to repair the rain leaders, and the rabbis hold that the injured party has to remove the cause of damage, and therefore they say that the owner has to repair even this). How could it be borne in mind that the sages of our Mishna differ in the case cited above? Are they not contrary to this opinion in the case of removing a tree (Baba Batra, p. 256)? It can only be said that the above Amoraim differ the same as the above Tanaim differ in the place cited. However, the point on which the Tanaim of our Mishna differ is this: Who must strengthen the roof? The rabbis hold, the smearing with clay of the roof and the rain leaders strengthens, hence, it is the obligation of the owner, and R. Jose holds that the above is only for straightening the roof? There shall not be any holes, and therefore it is the duty of the tenant to make the walking upon it more convenient.

But did not R. Ashi declare, when he was at the place of R. Kahana, that we all have decided that R. Jose admits that one is responsible for damage done to his fellow by things which come directly from him (though it is the obligation of every one to keep aloof from damaging things, so that the owner of it is not responsible for the carelessness of the injured one)? This is only as, *e.g.*, if one has planted a tree that did no harm when planted, but thereafter when the roots spread; but, *e.g.*, if one pours water, and while going downward it injures, he is responsible. Hence R. Hya's statement above that in such a case the lower one has to repair is not in accordance with R. Jose's theory. The case mentioned above was not direct, as he washed his hands at another place on the roof and the water rested there, and afterwards it flowed down from another place.

MISHNA *III.:* A house with an attic belonging to two persons which becomes ruined: the owner of the upper one requires the rebuilding and the owner of the house refuses; the former may rebuild the house and dwell in it until the latter returns him the expenses. R. Jehudah, however, maintains that even in such a case he is considered a tenant who must pay his rent (as

he has not his own house); therefore the owner of the attic rebuilds the house and attic, roofs it, and then he may make his dwelling down in the house until the expenses are paid.

GEMARA: Said R. Johanan: At three different places R. Jehudah teaches us that it is forbidden for one to derive benefit from the property of his neighbor, although the latter loses nothing; namely, in the case of our Mishna, also in case of changing the color by dyeing (First Gate, p. 216), and finally in case of the payment of a part of his debt, that R. Jehudah decrees that the note for collection loses its former force even if so stipulated. (Baba Batra.)

(Says the Gemara:) After all these statements we are not sure of such a decree by R. Jehudah, as all the three have their reasons; here because of spoiling the house while used, hence the owner loses by paying as for a new one; in the case of dyeing, because of changing of the agreement, and there is a Mishna above, p. 188, that he who does so must suffer; and also concerning the payment of a part of his debt, because it is only an asmakhta, which according to his theory above, p. 160, gives no title; but in cases where one does not suffer at all, and the other derived some benefit, may be that he (Jehudah) does not object.

R. A'ha b. Ada in the name of Ula said: If the owner of the lower part wants to rebuild his house with unhewn stones instead of hewn ones, his partner cannot protest (because the building with them is stronger than of the hewn ones), but if *vice versa*, he may prevent him. The same is the case with half bricks instead of whole ones (Rashi explains that between two half bricks, little stones and cork were laid, so that the wall became thicker by a span), and so it is with cedars instead of sycamores. To diminish the number of windows, and also the height of the building, his partner has no right to protest; if, however, the owner wanted to rebuild him the attic, just the reverse is the case, as the lower part may protest against a heavier attic which may damage his house. But how should the law be decided if both of them have no money to rebuild it? As R. Nathan of the following Boraitha: The owner of the lower part takes two shares and the upper one a third, and according to anonymous teachers the lower one takes three-quarters and the upper one one-quarter. And Rabba said: Practise as R. Nathan said, as he was a judge and always went into the deepness of the law. He reasoned that the upper building damages a third of the

lower (*i.e.*, that if the upper one were not upon it, it would hold a third more), therefore a third he must take.

MISHNA *IV.:* The same is the case with an olive-press which was placed under a garden. (Rashi explains that it means of two brothers who inherited them, one took the olive-press, the other the garden), and the roof of the press-house became ruined, the owner of the garden may descend and work up the bottom of the press-house for seed, until the roof of it will be repaired.

A wall or a tree which falls suddenly on a public thoroughfare, and causes damage, the owner is not responsible. If, however, time was given to him for cutting off the tree or the wall, and it fell after the time elapsed, he is responsible. If one's wall is placed at a neighbor's garden, and it falls (into his neighbor's garden), and he insists that the stones should be removed, the owner of them, however, says: "They are yours (as I renounce my ownership of them)," he is not to be listened to. If, however, the owner of the garden accepted his offer, and after a reconsideration he offers him his expenses for the removing, and repairs his stones, he is also not to be listened to.

The same is the case with a laborer who was hired to work with straw and hay, and when he demanded his pay, if the employer said to him: Take the articles in which you were engaged, for your payment, he must not be listened to. If, however, the laborer accepted, and after reconsideration the employer told him: Take cash for your hire and leave the articles to me, he must not be listened to.

GEMARA: Rabh said that the Mishna meant that the greater part of the roof was spoilt, but if only a small part, *e.g.*, four ells, he may work up his garden, and for the space spoilt he should use the bottom of the press-house. But Samuel said: It means even four ells, as it is disagreeable for one to sow in two places; and both cases of their differing were necessary to state; as if the former only, one might say that only concerning a dwelling Samuel disagreed with Rabh, and concerning sowing he agrees; and if the latter, one might say concerning sowing Rabh agrees with Samuel; therefore both were taught.

If time was given. What time is fixed for such a case by the court? Said R. Johanan: "Thirty days."

If one's wall was placed, etc. From the expression, "he offered him his expenses," it is to be understood that after the gardener has already removed; but if the reconsideration had

been before the removal, the owner of the wall has still the right to them, even if it was accepted by the gardener; why, then, let his estate give him title as R. Jose said above (p. 195). R. Jose's statement holds good when the former owner of that article agrees to give him title; here, however, he does not, as his former proposition was made only to win time for removing.

The same is the case with a laborer, etc. It was necessary for the Mishna to teach both cases, as in the former case only, one might say: It is because the gardener has nothing to demand from the owner of the wall; but in the latter case, where the laborer has to demand his money from the employer, he may be listened to, as people say: From a debtor of thine accept even bran in payment; and of this case only, one might say, as soon as he accepted, he acquires title, because he had money at his employer's, but in the former case the gardener does not acquire title, even if he accepted, as he has nothing to claim from the wall man; therefore both were necessary.

He must not be listened to. But have we not learned in a Boraitha that he may be listened to? Said R. Na'hman: This presents no difficulty. The Boraitha speaks of an ownerless article (which some one hired a laborer to remove without notifying him that it is such; and after he was through, he said, "Take this for your labor"), he may be listened to; and our Mishna treat of his own work. Rabha objected to R. Na'hman from the Boraitha above (p. 20), which states that if a laborer who was hired for the whole day finds an article, it belongs to his employer, from which it is easily understood that in our case, when he was hired to remove an ownerless article, the one who hired him acquired title to it, hence the drawing of the labor gives no title to him. Why then should the employer be listened to if he tells him to take it for his work? Therefore said R. Na'hman, both the Mishna and the Boraitha speak of ownerless articles; however, the cases are different, as the Mishna speaks of lifting (*i.e.*, that the laborer has removed the article), and the Boraitha speaks of looking (*i.e.*, that the laborer was hired to guard it by looking), so that there was no act on the part of the laborer which could give him title, and so neither of them has as yet acquired title; therefore the employer is listened to.

Said Rabba: If looking gives title to an ownerless article or not, the Tanaim of the following Mishna differ: The watchmen appointed to watch aftergrowth (of barley for omer) in the sab-

batical year, receive their wages from the treasure of the sanctuary. R. Jose, however, maintains, if one likes to do this for nothing he is allowed. Said the sages to him: According to your theory the omer would be brought from the donation of an individual. Is it not to assume that the point of their differing is whether looking gives title? According to the first Tana it does, and therefore if the watchman did it for nothing, he acquires title to it (as growth is ownerless in a sabbatical year); and R. Jose holds that looking does not give title, and the congregation acquires title on them when delivered to them The saying of the sages is to be explained thus: According to your decision, that one can watch without any payment, in accordance with our theory that looking gives title, the omer could be brought by an individual?

Said Rabha: All agree that looking gives no title, and the point of differing is whether it is to be feared for mighty men, who would take possession of the aftergrowth, being ignorant that it belongs to a sanctuary. The first Tana holds that such is to be feared, and therefore the sages enacted that the watchmen shall get four zuz, so that it shall come to the ears of the above that the sanctuary laid its hand on it, and they will keep aloof from it. R. Jose, however, holds that such an enactment was not made, and the sages said to him: According to your decision the watchman remits his four zuz to the congregation (as we are sure that four zuz were enacted), and so his four zuz in which they had no share will always be considered his, and if the congregation buys daily offerings for it or other things, it is considered from an individual (which is not allowed), and so said Rabin when coming from Palestine, that R. Johanan is also of the opinion that the above is the point of their differing.

MISHNA *V.:* One must not place his manure upon a public ground, unless it is immediately taken away by those who want to use it. Clay must not be soaked or bricks made upon a public thoroughfare; however, one may knead clay if needed for building, but not for bricks. For a building at a public place they must use the material as soon as it is brought, that it shall not be left there a long time, and even then, if they cause damage, the owner is responsible. R. Simeon b. Gamaliel maintains that one may prepare material for his building during thirty days.

GEMARA: Our Mishna is not in accordance with R. Jehudah, who said (First Gate, p. 66) that one may do so in the season.

Abye said: R. Jehudah with his decision just quoted, R. Simeon b. Gamaliel with his decision in our Msihna, and R. Simeon with his decision (First Gate, p. 145), that if damage was done there is no responsibility, are teaching that as soon as one placed his property with the permission of the court, he is not responsible for damage done by it.

The rabbis taught: If a hewer of stones has transferred them to the polisher, and they cause damage while under his control, the latter is responsible; the polisher to the drier, the latter to the carrier, and the latter to the builder, the builder to the architect; all of them are responsible if damage was done through the stones while under their control only, but as soon as one transfers them to the other, his responsibility ceases. If, however, the stones fall from the line they were placed upon, all of them are responsible. But have we not learned in another Boraitha that the very last one is responsible, while all others are free? This presents no difficulty. The first one speaks of a case where all of them undertook to build this building in partnership, and the second of a case where they were hired day laborers.

MISHNA *VI.:* When two gardens were placed one above the other, and some herbs were grown between them, according to R. Mair the herbs belong to the higher garden, and according to R. Jehudah to the lower one. Said R. Mair: (My decree is correct;) if the higher would remove his earth, there would be no herbs. Answered R. Jehudah: If the lower one would care to fill up his garden with earth to make it alike with the higher one, the same would be the case. Rejoined R. Mair: As either of them can prevent the other, we have to investigate from what sources the herbs exist. R. Simeon, however, maintains that the upper one may use that which he can reach with his hand, and the remainder belongs to the lower one.

GEMARA: Said Rabha: The sages of our Mishna do not differ concerning the rest of the herbs, that they belong to the upper one; they, however, do differ concerning the branches. R. Mair holds that the branches must go with the roots, and R. Jehudah does not agree with his theory, as we have learned in the following Boraitha, that that which comes out of the roots and the branches belongs to the owner of the estate. So is the decree of R. Mair. R. Jehudah, however, says that the branches belong to the owner of the tree. This is concerning business, and the same we have learned concerning Arla (the third year

of planting, of which the fruit is forbidden for use), and both cases were necessary to teach, as if only one case, one might say that they differ only concerning business, but not concerning prohibited things, and *vice versa*.

R. Simeon maintains, etc. Said the school of R. Janai: Provided he does not exert himself to reach them. Ephraim the scribe, the disciple of Resh Lakish, said in the name of his master, that the Halakha prevails in accordance with R. Simeon. This was reported to the King Sabura,* and he said: We are grateful to R. Simeon for his decision.

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* Rashi explains that the King Sabura was acquainted with the Jewish law, as well as with the Persian, and Thosphoth agree with him.

END OF BABA METZIA AND VOLUME XII.